SUPREME COURT OF THE UNITED STATES.

No. 360.

THE UNITED STATES, APPELLANTS,

vs.

SEVENTY-TWO BALES OF COTTON, ELIZABETH ALEXANDER, CLAIMANT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

GOVERNMENT PRINTING OFFICE.

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1 UNITED STATES OF AMERICA,
Southern district of Illinois, ss:

Pleas in the district court of the United States for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, judge of said court, on Monday, the fifth day of December, in the December special term of said court, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

THE UNITED STATES
v.
SIX HUNDRED AND FIFTY BALES OF COTTON, one hundred coils of rope, sixteen bales eight rolls and one hundred and sixty pieces of bagging, and 29 pieces of leather, seven hundred and eighty-eight bales and fifty-two sacks of cotton, four hundred and nine bales and one hundred and thirty-nine sacks of cotton, and one thousand bales of cotton. Elizabeth Alexander, claimant of 72 bales of cotton. } In prize.

2 Be it remembered, that on the thirteenth day of May, in the year of our Lord one thousand eight hundred and sixty-four, A. M. Pennock, fleet captain and commandant of naval station at Cairo, Illinois, reported to the judge of the district court of the United States for the southern district of Illinois, the capture of certain cotton and other property by vessels of the Mississippi squadron of the United States navy, commanded by Rear Admiral David D. Porter, which said report was filed in the office of the clerk of said court, and is in the words and figures following, to wit:

OFFICE MISSISSIPPI SQUADRON,
Mound City, Ill., May 13th, 1864.

SIR: I have the honor to inform you that the following cotton, captured by vessels belonging to this squadron, under command of Rear-Admiral Porter, is now at Cario, Illinois, stored with Messrs. Halliday & Co.: 207 bales Confederate cotton, captured in the Yazoo River, by the expedition commanded by Lieut. Com'dr E. K. Owen, U. S. N.; 1 bale cotton picked up in the Miss. River by the U. S. S. "W. H. Brown;" 3 bales cotton taken in the Yazoo expedition by the U. S. S. "Marmora;" 65 bales cotton captured by
3 the Black River expedition, consisting of the gunboats "Osage," "Choctaw," "Ouachita," "Conestoga," "Lexington," "Cricket," and "Fort Hindman;" 10 bales cotton captured by the U. S. S. "Osage;" 8 bales cotton captured by the U. S. S. "Cricket;" 1 bale cotton captured by the U. S. S. "Lexington;" 103 bales cotton taken by the Red River expedition; 48 bales and 6 bags cotton taken by the U. S. S. Petrel in Yazoo River; 63 bales cotton taken by the Red River expedition; 484 bales cotton taken by the Red River expedition, 17 bales of which are put in bags, the bales having broken open; 15 bales and 24 bags cotton taken in Red River by the U. S. S. "W. H. Brown;" 5 bales cotton taken by the U. S. S. "Marmora," at Stop Ld'g, Miss. River.

I also report the following articles as prize to the Red River expedition, viz: 100 coils of rope, 16 bales 8 rolls and 160 p'cs bagging, and 29 p'cs leather.

The following letters I enclose to you, one from Acting Master Thos. Gileson, commanding U. S. S. "Marmora," relative to the 3 bales cotton taken by that vessel in Yazoo River; one from Acting Master Thos. McElroy, comd'g U. S. S. "Petrel," relative to 49 bales and eight bags cotton taken by that vessel; (of this cotton only 48 bales and 6 bags were received here;) one from Acting Ensign J. W. Chambers, comd'g U. S. S. "Prairie Bird,"
4 in relation to the same; one from Lieut. Com'dr K. R. Breese, comd'g U. S. S. "Black Hawk," concerning 63 bales cotton taken by the Red River expedition; one from A. V. Lieut. J. A. French, comd'g U. S. S. "W. H. Brown," concerning 15 bales and 24 bags cotton taken by that vessel in Red River; one from Acting Master Thos. Gileson, concerning 5 bales cotton taken by the U. S. S. "Marmora," and one from Lieut. Com'dr K. R. Breese, comd'g U. S. S. "Black Hawk," concerning a lot of bagging, &c., taken by the Red River expedition.

Very respectfully, your ob't serv't,

A. M. PENNOCK,
Fleet Captain and Com'dt of Station.

Hon. S. H. TREAT,
U. S. Judge for the southern district of Illinois, Springfield, Ills.

Endorsed: Filed May 18th, 1864.

GEO. P. BOWEN, *Clerk.*

Whereupon, on the eighteenth day of May, in the year last aforesaid, came Lawrence Weldon, attorney of the United States for said district, and filed in the office of the clerk of said court a libel on behalf of the United States, and all others concerned, against six hundred and fifty bales of said cotton, one hundred coils of rope, sixteen bales of bagging, eight rolls bagging, and one hundred and sixty pieces bagging, and twenty-nine pieces of leather, which said libel is in the words and figures following, to wit:

5 *Libel.*—650 *bales of cotton, &c., &c.*

UNITED STATES OF AMERICA,
Southern district of Illinois, ss:

District court, in prize.

Be it remembered, that on the 18th day of May, A. D. 1864, before the Hon. Samuel H. Treat, judge of the said court, comes Lawrence Weldon, district attorney of the United States for said district, in the name and behalf of the United States and of all other persons concerned, propounds and gives the said judge to understand and be informed that on or about the 20th day of March, A. D. 1864, on waters navigable to the sea by vessels of ten or more tons burden, or on lands adjacent thereto, the navy of the United States did seize as lawful prize of war the following, to wit: 650 bales of cotton, 100 coils of rope, 16 bales of bagging, 8 rolls bagging, 160 pieces bagging, 29 pieces of leather, which are now at the port of Cairo, and within the jurisdiction of this court. The said attorney alleges that all and singular the premises are true and within the prize jurisdiction of this court, and that all of said property so captured is lawful prize of war. Therefore the said attorney prays that process of attachment may issue against said property, and the monition of this honorable court in that behalf to be made, and that all persons interested in said property may be cited to appear and answer all and singular the allegations of this libel, and all due proceedings be-
6 ing had, your honor will adjudge and decree a condemnation of said

property as prize of war, and that the proceeds thereof may be distributed according to law.

L. WELDON, *U. S. att'y.*

Endorsed: Filed May 18th, A. D. 1864.

GEO. P. BOWEN, *Clerk.*

Whereupon a writ of attachment and monition was issued against said property, directed to the marshal of the southern district of Illinois to execute, and was afterwards, to wit, on the nineteenth day of May, in the year last aforesaid, returned by said marshal duly executed, which said writ, together with the return of the marshal thereto, is in the words and figures, following to wit:

Attachment and monition.

THE UNITED STATES OF AMERICA,
Southern district of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of Illinois on the eighteenth day of May, in the year of our Lord one thousand eight hundred and sixty-four, by L. Weldon,
7 district attorney of the United States for said district, on behalf of the United States and of all other persons concerned against six hundred and fifty bales of cotton, one hundred coils of rope, sixteen bales of bagging, eight rolls of bagging, one hundred and sixty pieces of bagging, and twenty-nine pieces of leather, for reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons having or pretending to have any right, title, or interest therein may be cited to appear and answer all and singular the matters in said libel articulately propounded, and that this court would be pleased to pronounce for the condemnation thereof as lawful prize of war. You are therefore commanded to attach the said six hundred and fifty bales of cotton, one hundred coils of rope, sixteen bales of bagging, eight rolls of bagging, one hundred and sixty pieces of bagging, and twenty-nine pieces of leather, and to detain the same in your custody until the further order of this court respecting the same, and to give due notice by publication in the Illinois State Register for fourteen days previous to the day of trial of such seizure and libel to all persons claiming the said six hundred and fifty
8 bales of cotton, one hundred coils of rope, sixteen bales of bagging, eight rolls of bagging, one hundred and sixty pieces of bagging, and twenty-nine pieces of leather, or knowing or having anything to say why this court should not pronounce against the same according to the prayer of the said libel, and that they be and appear before the said court to be held in and for the southern district of Illinois, at the United States court-room, in the city of Springfield, in said district, on the first Monday in June next, if that be day of jurisdiction; if not, then on the first day of jurisdiction thereafter, at 10 o'clock in the forenoon of that day, then and there to interpose a claim for the same, and to make their allegations in that behalf; and what you shall have done in the premises do you then and there make return together with this writ.

Witness the Hon. Samuel H. Treat, judge of our said court, this eighteenth
[L. S.] day of May, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth.

GEO. P. BOWEN, *Clerk.*

9 *Marshal's return.*

By virtue of this writ, I have this day levied on and attached the within-described property, and made due proclamation thereof; and as said property is perishable and liable to be destroyed, I respectfully recommend its sale, pending proceedings against the same, this 19th day of May, 1864.

D. L. PHILLIPS, *U. S. Marshal.*

Endorsed: Filed this 19th day of May, A. D. 1864.

GEO. P. BOWEN, *Clerk.*

Notice of libel and seizure.

UNITED STATES OF AMERICA,
Southern district of Illinois, ss:

Whereas on the 18th day of May, A. D. 1864, L. Weldon, United States district attorney, filed a libel in the district court of the United States for the southern district of Illinois, against 650 bales of cotton, one hundred and eighty coils of rope, sixteen bales of bagging, eight rolls of bagging, 180 pieces of bagging, and 29 pieces of leather, in a cause of condemnation and forfeiture; and whereas by virtue of process in due form of law to me directed, returnable on the first Monday in June next, I have seized upon and taken the said property, and have the same in my custody: Notice is hereby given that a district court of the United States will be held at the
10 United States court-room, in the city of Springfield, on the first Monday in June next, for the trial of the said premises, and the owner or owners and all persons who have or claim any interest are hereby cited to be and appear at the time and place aforesaid to show cause, if any they have, why a final decree should not pass as prayed.

Springfield, May 20, 1864.

D. L. PHILLIPS, *U. S. Marshal.*

Certificate of publication.

The undersigned, publishers of the Illinois State Register, a newspaper published at Springfield, Illinois, do hereby certify that the annexed notice was published in said paper for fourteen days' successively, the first publication thereof having been made on the 21st day of May, A. D. 1864, and the last on the 5th day of June, A. D. 1864.

Ills. State Register Print'g Co., publishers Illinois State Register, per—

D. O. C.

Endorsed: Filed June 6th, 1864.

GEO. P. BOWEN, *Clerk.*

And on the said nineteenth day of May, in the year last aforesaid, the following proceedings were had in said court, and entered of record, to wit:

11 *Order of sale pendente lite.*

THE UNITED STATES *v.* SIX HUNDRED AND FIFTY BALES OF COTTON, ONE hundred coils of rope, sixteen bales, eight rolls, and one hundred and sixty pieces of bagging, and 29 pieces of leather.	In prize.

It appearing to the court from the return of the marshal to the writ of

monition issued in this cause, that he has attached the said six hundred and fifty bales of cotton, one hundred coils of rope, sixteen bales eight rolls and one hundred and sixty pieces of bagging, and twenty-nine pieces of leather, and that the same are perishable and liable to destruction, it is thereupon ordered by the court that the said property be sold by the marshal under and by virtue of a writ of venditioni exponas to be issued by the clerk of this court in accordance with the rules and practice of the court, and that upon making such sale the marshal deposit the proceeds thereof with the assistant treasurer of the United States at St. Louis, subject to the order of the court. It is further ordered that said writ be made returnable on the second Monday of June next, and that the marshal give notice of said sale by publication in the newspaper designated by the
12 court, and also in one or more newspapers published in the cities of Chicago, St. Louis, Cincinnati, and Cairo.

Whereupon a writ of venditioni exponas was issued directed to the marshal of said district to execute, and was afterwards, to wit, on the twenty-first day of June, in the year last aforesaid, returned by said marshal, duly executed, which said writ, together with the return of the marshal thereto and the certificate of deposit filed therewith, are in the words and figures following, to wit:

Venditioni exponas.

THE UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

Whereas a libel was filed in the district court of the United States for the southern district of Illinois, on the eighteenth day of May, in the year of our Lord one thousand eight hundred and sixty-four, by Lawrence Weldon, district attorney of the United States for said district, in the name and behalf of the United States of America and of all other persons concerned, against six hundred and fifty bales of cotton, one hundred coils of rope, sixteen bales of bagging, eight rolls of bagging, one hundred and sixty
13 pieces of bagging, and twenty-nine pieces of leather, praying that the same may be condemned and sold by the causes in said libel alleged. And whereas the above-described property has been attached by process issued out of said district court in pursuance of the said libel, and is now in custody by virtue thereof, and such proceedings have been thereupon had that by the decree of said court in this cause made on the nineteenth day of May in the year of our Lord one thousand eight hundred and sixty-four, the said above-described property was ordered to be sold by you, the said marshal, after giving ten days' notice of such sale according to law.

Therefore you, the said marshal, are hereby commanded to cause said above-described property to be sold in manner and form upon the notice, and at the time and place required by law, and that you deposit the money arising from such sale with the assistant treasurer of the United States at St. Louis. And have you a certificate thereof, together with a return of your proceedings hereon in the said court at Springfield, in said district, on the second Monday of June, in the year of Lord one thousand eight
14 hundred and sixty-four, and have you also then and there this writ.

Witness the Hon. Samuel H. Treat, judge of our said court, this nineteenth day of May, in the year of our Lord one thousand eight hundred
[L. S.] sixty-four, and of our independence the eighty-eighth.

GEO. P. BOWEN, *Clerk.*

Marshal's return.

By virtue of this writ I sold on the 8th day of June, A. D. 1864, the within-described property for the sum of two hundred seventy two thousand four hundred thirty-seven and 39-100, and have deposited the same with assistant United States treasurer at St. Louis, the certificate of which deposit I now return with this writ.

D. L. PHILLIPS, *U. S. Marshal.*

Endorsed: Filed June 21st, A. D. 1864.

GEO. P. BOWEN, *Clerk.*

Notice of sale.— United States marshal's sale in admiralty.

By virtue of a writ of sale issued out of the United States district court for the southern district of Illinois in admiralty, dated on the 19th day of May, A. D. 1864, will be sold at public auction to the highest and best
15 bidder for cash, at Cairo, in said district, on the 8th day of June, A. D. 1864, the following-described property, to wit: Six hundred and fifty bales of cotton, 100 coils of rope, 16 bales of bagging, eight rolls of bagging, 160 pieces of bagging, and 29 pieces of leather, the same having been ordered by the court to be sold for the benefit of those whom it may concern.

Springfield, Ill's, May 20, 1864.

D. L. PHILLIPS, *U. S. Marshal.*

Certificate of publication.

The undersigned, publishers of the Illinois State Register, a newspaper published in Springfield, Illinois, do hereby certify that the annexed notice was published in said paper fourteen days successively, the first publication thereof having been made on the 21st day of May, A. D. 1864, and the last on the 1st day of June, A. D. 1864.

Ill's State Reg. Print'g Co., publishers Illinois State Register, per—

D. O. C.

Endorsed: Filed June 21st, 1864.

GEO. P. BOWEN, *Clerk.*

Certificate of deposit.

$272,437 39. OFFICE OF ASSISTANT TREASURER, U. S.,
St. Louis, Mo., June 18, 1864.

I certify that D. L. Phillips, U. S. marshal for the southern district of Illinois, has this day deposited to the credit of the district court
16 of the United States for said district, in the case of the United States *vs.* 650 bales of cotton, &c., two hundred and seventy-two thousand four hundred thirty-seven and 39-100 dollars, proceeds of sale in said cause.

BEN. FARRAR, *Assistant Treasurer.*

(Original.)

Endorsed: Filed June 21st, 1864.

GEO. P. BOWEN, *Clerk.*

On the eighteenth day of May, in the year last aforesaid, A. M. Pennock, fleet captain and commandant of naval station at Cairo, Illinois, reported to the judge of said court the capture of seven hundred and eighty-eight bales and fifty-two sacks of cotton, and four hundred and nine bales and one hun-

dred and thirty nine sacks of cotton, by vessels belonging to the Mississippi squadron of the United States navy, commanded by Rear-Admiral David D. Porter, which said reports, together with the letters accompanying the same, were filed in the office of the clerk of said court.

And thereupon, on the twenty-first day of May, in the year last aforesaid, came Lawrence Weldon, attorney of the United States for said
17 district, and filed in the office of said clerk a libel in behalf of the United States and all other persons concerned against said seven hundred and eighty-eight bales fifty-two sacks of cotton, which said libel is in the words and figures following, to wit:

Libel.—788 *bales and* 52 *sacks of cotton.*

UNITED STATES OF AMERICA,
Southern district of Illinois, ss:

District court.—In prize.

Be it remembered, that on the 21st day of May, A. D. 1864, before the Hon. Samuel H. Treat, judge of the said court, comes Lawrence Weldon, district attorney for the United States for said district, in the name and behalf of the United States and of all other persons concerned, propounds and gives the said judge to understand and be informed that on or about the 1st day of April, A. D. 1864, on waters navigable to the sea by vessels of ten or more tons burden, or on lands adjacent thereto, the navy of the United States did seize as lawful prize of war the following, to wit: Seven hundred and eighty-eight bales and fifty-two sacks of cotton, which are now at the port of Cairo and within the jurisdiction of this court. The said attorney alleges that all and singular the premises are true and within the prize jurisdiction of this court, and that all of said property so captured is lawful prize
18 of war. Wherefore the said attorney prays that process of attachment may issue against said property, and the monition of this honorable court in that behalf to be made, and that all persons interested in said property may be cited to appear and answer all and singular the allegations of this libel; and all due proceedings being had, your honor will adjudge and decree a condemnation of said property as prize of war, and that the proceeds thereof may be distributed according to law.

L. WELDON, *U. S. Att'y.*

Endorsed: Filed May 21st, 1864.

GEO. P. BOWEN, *Clerk.*

Whereupon the following proceedings were had in said court, in said entitled cause, and entered of record, to wit:

Order for process.

THE UNITED STATES
vs.
788 BALES AND 52 SACKS OF COTTON. } In prize.

It is ordered by the court that a writ of monition issue in this cause, returnable on the second Monday of June next.

And thereupon a writ of attachment and monition was issued against said property, directed to the marshal of the southern district of Illinois
19 to execute; and was afterwards, to wit, on the twenty-third day of May, in the year last aforesaid, returned by said marshal duly executed; which said writ, together with the return of the marshal thereto, is in the words and figures following, to wit:

Attachment and monition.

THE UNITED STATES OF AMERICA,
Southern district of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of Illinois on the twenty-first day of May, in the year of our Lord one thousand eight hundred and sixty-four, by L. Weldon, district attorney of the United States for said district, in the name and behalf of the United States and of all other persons concerned against seven hundred and eighty-eight bales and fifty-two sacks of cotton, for reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons having or pretending to have any right, title, or interest therein may be cited to appear and answer all and singular the matters in said libel articulately propounded, and that this court would be pleased to pronounce for the
20 condemnation thereof as lawful prize of war: You are therefore commanded to attach the said seven hundred and eighty-eight bales and fifty-two sacks of cotton, and to detain the same in your custody until the further order of this court respecting the same, and to give due notice, by publication in the Illinois State Register for fourteen days previous to the day of trial, of such seizure and libel to all persons claiming the said seven hundred and eighty-eight bales and fifty-two sacks of cotton, or knowing or having anything to say why this court should not pronounce against the same according to the prayer of said libel, and that they be and appear before the said court to be held in and for the southern district of Illinois at the United States court-room, in the city of Springfield, in said district, on the second Monday in June next, if that be a day of jurisdiction; if not, then on the first day of jurisdiction thereafter, at 10 o'clock in the forenoon of that day, then and there to interpose a claim for the same and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return, together with this writ.

Witness the Hon. Samuel H. Treat, judge of our said court,
21 [L. S.] this twenty-first day of May in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth.

GEO. P. BOWEN, *Clerk.*

Marshal's return.

By virtue of this writ I have attached and seized the within-described property, and made due proclamation of the same; and as said property is perishable and liable to be destroyed, I respectfully recommend its sale pending proceedings, on this 23d day of May, A. D. 1864.

D. L. PHILLIPS, *U. S Marshal.*

Endorsed: Filed this 23d day of May, A. D. 1864.

GEO. P. BOWEN, *Clerk.*

Notice of libel and seizure.

UNITED STATES OF AMERICA,
Southern district of Illinois, ss:

Whereas on the 21st day of May, A. D. 1864, L. Weldon, United States district attorney, filed a libel in the district court of the United States for the

southern district of Illinois, against 788 bales of cotton and 52 sacks of cotton, in a cause of condemnation and forfeiture; and whereas by virtue of process in due form of law to me directed, returnable on the second Monday in June next, I have seized upon and taken the said property, and
22 have the same in my custody: Notice is hereby given that a district court of the United States will be held at the United States court-room in the city of Springfield, on the second Monday in June next, for the trial of the said premises, and the owner or owners and all persons who have or claim any interest are hereby cited to be and appear at the time and place aforesaid, to show cause, if any they have, why a final decree should not pass as prayed.

D. L. PHILLIPS, *U. S. Marshal.*

Springfield, May 23, 1864.

Certificate of publication.

The undersigned, publishers of the Illinois State Register, a newspaper published at Springfield, Illinois, do hereby certify that the annexed notice was published in said paper for fourteen days successively, the first publication thereof having been made on the 24th day of May, A. D. 1864, and the last on the 8th day of June, A. D. 1864

ILL'S STATE REG. PRINT'G CO.,
Publishers Illinois State Register.

Endorsed: Filed June 13th, 1864.

GEO. P. BOWEN, *Clerk.*

And on the 23d day of May, in the year last aforesaid, the following
23 further proceedings were had in said court in said entitled cause, and entered of record, to wit:

Order of sale pendente lite.

THE UNITED STATES
vs.
788 BALES AND 52 SACKS OF COTTON. } In prize.

It appearing to the court from the return of the marshal to the writ of monition issued in this cause that he has attached the said seven hundred and eighty-eight bales and fifty-two sacks of cotton, and that the same is perishable and liable to destruction, it is thereupon ordered by the court that the said property be sold by the marshal under and by virtue of a writ of venditioni exponas to be issued by the clerk of this court, in accordance with the rules and practice of the court, and that upon making such sale the marshal deposit the proceeds thereof with the assistant treasurer of the United States at St. Louis, subject to the order of the court. It is further ordered that said writ be made returnable on the second Monday of June next, and that the marshal give notice of said sale by publication in the newspaper designated by the court, and also in one or more newspapers published in the cities of Chicago, St. Louis, Cincinnati, and Cairo.

24 Whereupon a writ of venditioni exponas was issued, directed to the marshal of said district to execute, and was afterwards, to wit, on the twenty-first day of June, in the year last aforesaid, returned by said marshal, duly executed, which said writ, together with the return of the marshal thereto, and the certificate of deposit filed therewith, are in the words and figures following, to wit:

Venditioni exponas.

THE UNITED STATES OF AMERICA,
Southern district of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

Whereas a libel was filed in the district court of the United States for the southern district of Illinois on the twenty-first day of May, in the year of our Lord one thousand eight hundred and sixty-four, by L. Weldon, district attorney of the United States for said district, in the name and behalf of the United States and of all other persons concerned against seven hundred and eighty-eight bales and fifty-two sacks of cotton, praying that the same may be condemned and sold for the causes in said libel alleged; and whereas the said seven hundred and eighty-eight bales and fifty-two sacks of cotton has been attached by process issued out of said district
25 court, in pursuance of the said libel, and is now in custody by virtue thereof, and such proceedings have been thereupon had that by the decree of said court in this cause, made on the twenty-third day of May, in the year of our Lord one thousand eight hundred and sixty-four, the said seven hundred and eighty-eight bales and fifty-two sacks of cotton was ordered to be sold by you, the said marshal, after giving ten days' notice of such sale according to law: Therefore you, the said marshal, are hereby commanded to cause said seven hundred and eighty-eight bales and fifty-two sacks of cotton to be sold in manner and form upon the notice and at the time and place required by law, and that you deposit the money arising from such sale with the assistant treasurer of the United States at St. Louis, and have you a certificate thereof, together with a return of your proceedings hereon, in said court at Springfield, in said district, on the second Monday of June, in the year of our Lord one thousand eight hundred and sixty-four, and have you also then and there this writ.

Witness the Hon. Samuel H. Treat, judge of our said court, this
[L. S.] twenty-third day of May, in the year of our Lord one thousand eight hundred and sixty-four, and of our indepencence the eighty-eighth.

GEO. P. BOWEN, *Clerk.*

26 *Marshal's return.*

By virtue of this writ I sold, on the 8th day of June, A. D. 1864, the within-described property for the sum of three hundred twenty-one thousand eight hundred and twenty-four and 19-100 dollars, and have deposited the same with the assistant United States treasurer at St. Louis, the certificate of which deposit I now return with this writ.

D. L. PHILLIPS, *U. S. Marshal.*

Endorsed: Filed June 21st, A. D. 1864.

GEO. P. BOWEN, *Clerk.*

Notice of sale.—United States marshal's sale in admiralty.

By virtue of a writ of sale issued out of the United States district court for the southern district of Illinois, in admiralty, dated on the 23d day of May, A. D. 1864, will be sold at public sale to the highest and best bidder, for cash, at Cairo, in said district, on the 8th day of June, A. D. 1864, the following described property, to wit: Seven hundred and eighty-eight bales and fifty-two sacks of cotton, ordered by the court to be sold for the benefit of whom it may concern.

D. L. PHILLIPS, *U. S. Marshal.*

Springfield, Ill., May 23, 1864.

Certificate of publication.

The undersigned, publishers of the Illinois State Register, a news-
27 paper published at Springfield, Illinois, do hereby certify that the annexed notice was published in said paper for ten days successively, the first publication thereof having been made on the 24th day of May, A. D. 1864, and the last on the 4th day of June, A. D. 1864.

Ill's State Reg. Print'g Co., publishers Illinois State Register, per—
D. O. C.

Endorsed: Filed June 21st, 1864.

GEO. P. BOWEN, *Clerk.*

Certificate of deposit.

$321,824 19. OFFICE OF ASSISTANT TREASURER U. S.,
St. Louis, Mo., June 18, 1864.

I certify that D. L. Phillips, U. S. marshal for the southern district of Illinois, has this day deposited to the credit of the district court of the United States for said district, in the case of the United States *vs.* 788 bales and 52 sacks of cotton, three hundred and twenty-one thousand eight hundred and twenty-four and 19-100 dollars, proceeds of sale in said cause.

BEN. FARRAR, *Assistant Treasurer.*

(Original.)
Endorsed: Filed June 21st, 1864.

GEO. P. BOWEN, *Clerk.*

28 On the said twenty-first day of May, in the year last aforesaid, the said Lawrence Weldon, attorney of the United States for said district, also filed in the office of the clerk of said court a libel in behalf of the United States and all others concerned against the said four hundred and nine bales and one hundred and thirty-nine sacks of cotton, which said libel is in the words and figures following, to wit:

Libel.—409 *bales and* 139 *sacks of cotton.*

UNITED STATES OF AMERICA,
Southern district of Illinois, ss:

District court.—In prize.

Be it remembered, that on the 21st day of May, A. D. 1864, before the Hon. Samuel H. Treat, judge of the said court, comes Lawrence Weldon, district attorney of the United States for said district, in the name and behalf of the United States and ot all other persons concerned, propounds and gives the said judge to understand and be informed that on or about the first day of April, 1864, on waters navigable to the sea by vessels of ten or more tons burden, or on lands adjacent thereto, the navy of the United States did seize as lawful prize of war the following, to wit: Four hundred and nine bales and one hundred and thirty-nine sacks of cotton, which are now at the port of Cairo, and within the jurisdiction of this court.

29 The said attorney alleges that all and singular the premises are true and within the prize jurisdiction of this court, and that of all the said property so captured is lawful prize of war. Wherefore the said attorney prays that process of attachment may issue against said property, and the monition of this honorable court in that behalf to be made, and that all persons interested in said property may be cited to appear and answer all and singular the allegations of this libel; and all due proceedings being

had, your honor will adjudge and decree a condemnation of said property as prize of war, and that the proceeds thereof may be distributed according to law.

L. WELDON, *U. S. Att'y.*

Endorsed: Filed May 21st, 1864.

GEO. P. BOWEN, *Clerk.*

And on the said twenty-first day of May, in the year last aforesaid, the following proceedings were had in said court, and entered of record, to wit:

Order for process.

THE UNITED STATES STATES
vs.
409 BALES AND 139 SACKS OF COTTON. } In prize.

It is ordered by the court that a writ of monition issue in this cause returnable on the second Monday of June next.

30 Wherefore a writ of attachment and monition was issued against said property, directed to the marshal of the southern district of Illinois to execute, and was afterwards, to wit, on the twenty-third day of May, in the year last aforesaid, returned by said marshal duly executed, which said writ, together with the return of the marshal thereto, is in the words and figures following, to wit:

Attachment and monition.

THE UNITED STATES OF AMERICA,
Southern district of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of Illinois, on the 21st day of May, in the year of our Lord one thousand eight hundred sixty-four, by L. Weldon, district attorney of the United States for said district, in the name and behalf of the United States and of all other persons concerned against four hundred and nine bales and one hundred and thirty-nine sacks of cotton, for reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons having or

31 pretending to have any right, title, or interest therein may be cited to appear and answer all and singular the matters in said libel articulately propounded, and that this court would be pleased to pronounce for the condemnation thereof as lawful prize of war: You are therefore commanded to attach the said four hundred and nine bales and one hundred and thirty-nine sacks of cotton, and to detain the same in your custody until the further order of this court respecting the same, and to give due notice by publication in the Illinois State Register for fourteen days previous to the day of trial of such seizure and libel, to all persons claiming the said four hundred and nine bales and one hundred and nine sacks of cotton, or knowing or having anything to say why this court should not pronounce against the same according to the prayer of said libel, and that they be and appear before the said court to be held in and for the southern district of Illinois, at the United States court-room in the city of Springfield, in said district, on the second Monday in June next, if that be a day of jurisdiction, if not, then on the first day of jurisdiction thereafter,

at 10 o'clock in the forenoon of that day, then and there to interpose a
32 claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return, together with this writ.

Witness the Hon. Samuel H. Treat, judge of our said court, this
[L. S.] twenty-first day of May, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth.

GEO. P. BOWEN, *Clerk.*

Marshal's return.

By virtue of this writ I have attached and seized the within-described property, and made due proclamation thereof, and as said property is perishable and liable to be destroyed, I respectfully recommend its sale pending proceedings, on the 23d day of May, 1864.

D. L. PHILLIPS, *U. S. Marshal.*

Endorsed: Filed this 23d day of May, A. D. 1864.

GEO. P. BOWEN, *Clerk.*

Notice of libel and seizure.

UNITED STATES OF AMERICA,
Southern district of Illinois, ss:

Whereas, on the 21st day of May, A. D. 1864, L. Weldon, United States district attorney, filed a libel in the district court of the United
35 States for the southern district of Illinois against 409 bales and 139 sacks of cotton, in a cause of condemnation and forfeiture; and whereas, by virtue of process in due form of law to me directed, returnable on the second Monday in June next, I have seized upon and taken the said property, and have the same in my custody:

Notice is hereby given that a district court of the United States will be held at the United States court-room in the city of Springfield, on the second Monday in June next, for the trial of the said premises, and the owner or owners, and all persons who have or claim any interest are hereby cited to be and appear at the time and place aforesaid, to show cause, if any they have, why a final decree should not pass as prayed.

D. L. PHILLIPS, *U. S. Marshal.*

Springfield, Ills., May 23, 1864.

Certificate of publication.

The undersigned, publishers of the Illinois State Register, a newspaper published at Springfield, Illinois, do hereby certify that the annexed notice was published in said paper for fourteen days successively, the first publication thereof having been made on the 24th day of May, A. D. 1864, and the last on the 8th day of June, A. D. 1864.

Ill's State Reg. Print'g Co., publishers Illinois State Register, per—

D. O. C.

34 Endorsed: Filed June 13th, 1864.

GEO. P. BOWEN, *Clerk.*

And on the twenty-third day of May, in the year last aforesaid, the following further proceedings were had in said court, and entered of record, to wit:

Order of sale pendente lite.

THE UNITED STATES
v.
409 BALES AND 139 SACKS OF COTTON. } In prize.

It appearing to the court from the return of the marshal to the writ of monition issued in this cause that he has attached the said four hundred and nine bales and one hundred and thirty-nine sacks of cotton, and that the same is perishable and liable to be destroyed, it is thereupon ordered by the court that the said property be sold by the marshal under and by virtue of a writ of venditioni exponas to be issued by the clerk of this court in accordance with the rules and practice of the court, and that upon making such sale the marshal deposit the proceeds thereof with the assistant treasurer of the United States at St. Louis, subject to the order of the
35 court. It is further ordered that said writ be made returnable on the second Monday of June next, and that the marshal give notice of said sale by publication in the newspaper designated by the court, and also in one or more newspapers published in the cities of Chicago, St. Louis, and Cairo.

Whereupon a writ of venditioni exponas was issued, directed to the marshal of said district to execute, and was afterwards, to wit, on the twenty-first day of June, in the year last aforesaid, returned by said marshal duly executed, which said writ, together with the return of the marshal thereto and the certificate of deposit filed therewith, are in the words and figures following, to wit:

Venditioni exponas.

THE UNITED STATES OF AMERICA,
Southern district of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

Whereas a libel was filed in the district court of the United States for the southern district of Illinois on the twenty-first day of May, in the year of our Lord one thousand eight hundred and sixty-four, by L. Weldon, district attorney of the United States for said district, in the name and behalf
36 of the United States and of all other persons concerned against four hundred and nine bales and one hundred and thirty-nine sacks of cotton, praying that the same may be condemned and sold for the causes in said libel alleged; and whereas the said four hundred and nine bales and one hundred and thirty-nine sacks of cotton has been attached by process issued out of said district court in pursuance of the said libel, and is now in custody by virtue thereof, and such proceedings have been thereupon had that by the decree of said court in this cause, made on the twenty-third day of May, in the year of our Lord one thousand eight hundred and sixty-four, the said four hundred and nine bales, and one hundred and thirty-nine sacks of cotton was ordered to be sold by you, the said marshal, after giving ten days' notice of such sale according to law: Therefore you, the said marshal, are hereby commanded to cause said four hundred and nine bales and one hundred and thirty-nine sacks of cotton to be sold in manner and form upon the notice and at the time and place required by law, and that you deposit the money arising from such sale with the assistant treasurer
37 of the United States at St. Louis, and have you a certificate thereof, together with a return of your proceedings hereon in said court, at Springfield, in said district, on the second Monday of June, in the year of

our Lord one thousand eight hundred and sixty-four, and have you also then and there this writ.

Witness the Hon. Samuel H. Treat, judge of our said court, this twenty-third day of May, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth.

[L. S.]

GEO. P. BOWEN, *Clerk.*

Marshal's return.

By virtue of this writ I sold on the 8th day June, A. D. 1864, the within-described property for the sum of one hundred seventy-six thousand nine hundred and fifty-eight and 36-100 dollars, and have deposited the same with the assistant United States treasurer at St. Louis, the certifiate of which deposit I now return with this writ.

D. L. PHILLIPS, *U. S. Marshal.*

Endorsed: Filed June 21st, A. D. 1864.

GEO. P. BOWEN, *Clerk.*

Notice of sale.—United States marshal's sale in admiralty.

38 By virtue of a writ of sale issued out of the United States district court for the southern district of Illinois in admiralty, dated on the 23d day of May, A. D. 1864, will be sold at public sale to the highest and best bidder, for cash, at Cairo, in said district, on the 8th day of June, A. D. 1864, the following-described property, to wit: four hundred and nine bales and 139 sacks of cotton, the same having been ordered by the court to be sold for the benefit of whom it may concern.

D. L. PHILLIPS, *U. S. Marshal.*

Springfield, May 23, 1864.

Certificate of publication.

The undersigned, publishers of the Illinois State Register, a newspaper published at Springfield, Illinois, do hereby certify that the annexed notice was published in said paper for ten days successively, the first publication thereof having been made on the 24th day of May, A. D. 1864, and the last on the 4th day June, A. D. 1864.

Ill's State Reg. Print'g Co., publishers Illinois State Register, per—

D. O. C.

Endorsed: Filed June 21, 1864.

GEO. P. BOWEN, *Clerk.*

39 *Certificate of deposit.*

$176,958 36. OFFICE OF ASSISTANT TREASURER U. S.,
St. Louis, Mo., June 18, 1864.

I certify that D. L. Phillips, U. S. marshal for the southern district of Illinois, has this day deposited to the credit of the district court of the United States for said district, in the case of the United States *vs.* 409 bales and 139 sacks of cotton, one hundred and seventy-six thousand nine hundred and fifty eight and 36-100 dollars, proceeds of sale in said cause.

BEN. FARRAR, *Assistant Treasurer.*

(Original.)

Endorsed: Filed June 21, 1864.

GEO. P. BOWEN, *Clerk.*

On the thirty-first day of May in the year last aforesaid, Rear-Admiral David D. Porter, commanding the Mississippi squadron, reported to the judge of said court one thousand bales of cotton captured by the Ouachita River expedition, which said report was filed in the office of the clerk of said court.

And thereupon on the third day of June, in the year last aforesaid, came Lawrence Weldon, attorney of the United States for said district, and filed, in the office of the clerk of said court a libel in behalf of the United
40 States and all others concerned against the said one thousand bales of cotton, which said libel is in the words figures following to wit:

Libel.—1,000 *bales of cotton.*

UNITED STATES OF AMERICA,
Southern district of Illinois, ss:

District court.—In prize.

Be it remembered, that on the third day of June, A. D. 1864, before the Hon. Samuel H. Treat, judge of the said court, comes Lawrence Weldon, district attorney for the United States for said district, in the name and behalf of the United States and of all other persons concerned, propounds and gives the said judge to understand and be informed that on or about the 20th day of May, A. D. 1864, on waters navigable to the sea by vessels of ten or more tons burden, or on lands adjacent thereto, the navy of the United States did seize as lawful prize of war the following, to wit: one thousand bales of cotton, which are now at the port of Cairo and within the jurisdiction of this court. The said attorney alleges that all and singular the premises are true and within the prize jurisdiction of this court, and that all of the said property so captured is lawful prize of war. Wherefore the said attorney prays that process of attachment may issue against said property and the monition of this honorable court in that behalf to be made, and that all persons interested in said property may be cited to appear and answer
41 all and singular the allegations of this libel; and all due proceedings being had, your honor will adjudge and decree a condemnation of said property as prize of war, and that the proceeds thereof may be distributed according to law.

L. WELDON, *U. S. Att'y.*

Endorsed: Filed June 3d, 1864.

GEO. P. BOWEN, *Clerk.*

And on said third day of June, in the year last aforesaid, the following proceedings were had in said court, and entered of record, to wit:

Order for process.

THE UNITED STATES
v.
1,000 BALES OF COTTON. } In prize.

It is ordered by the court that a writ of monition issue in this cause returnable on the third Monday of June instant.

Whereupon a writ of attachment and monition was issued against said property directed to the marshal of the southern district of Illinois to execute, and was afterwards, to wit, on the fourth day of June, in the year last aforesaid, returned by said marshal duly executed, which said writ, together with the return of the marshal thereto, is in the words and figures following, to wit:

42 *Attachment and monition.*

THE UNITED STATES OF AMERICA,
Southern district of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of Illinois on the third day of June, in the year of our Lord one thousand and eight hundred and sixty-four, by Lawrence Weldon, district attorney of the United States for said district, in the name and behalf of the United States and of all others concerned against one thousand bales of cotton for reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons having or pretending to have any right, title, or interest therein may be cited to appear and answer all and singular the matters in said libel articulately propounded, and that this court would be pleased to pronounce for the condemnation thereof as lawful prize of war: You are therefore commanded to attach the said one thousand bales of cotton, and to detain the same in your custody until the further order of this court respecting the same, and to give due notice by publication in the Illinois State Register for fourteen days previous to the day of trial
43 of such seizure and libel, to all persons claiming the said one thousand bales of cotton or knowing or having anything to say why this court should not pronounce against the same, according to the prayer of said libel, and that they be and appear before the said court, to be held in and for the southern district of Illinois, at the United States court-room, in the city of Springfield, in said district on the third Monday in June inst., if that be a day of jurisdiction, if not, then on the first day of jurisdiction thereafter, at 10 o'clock in the forenoon of that day, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return, together with this writ.

Witness the Hon. Samuel H. Treat, judge of said court, this third
[L. S.] day of June, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth.

GEO. P. BOWEN, *Clerk.*

Marshal's return.

By virtue of this writ I have this 4th day of June, 1864, attached the within described property and made proclamation thereof; and as said
44 cotton is perishable and liable to be destoyed, I respectfully recommend its sale pending proceedings against the same.

D. L. PHILLIPS, *U. S. Marshal.*

Endorsed: Filed this 4th day of June, A. D. 1864.

GEO. P. BOWEN, *Clerk.*

Notice of libel and seizure.

UNITED STATES OF AMERICA,
Southern district of Illinois, ss:

Whereas on the third day of June, A. D. 1864, L. Weldon, United States district attorney, filed a libel in the district court of the United States for the southern district of Illinois against one thousand bales of cotton, in a cause of condemnation and forfeiture; and whereas by virtue of process in

due form of law to me directed, returnable on the 3d Monday in June inst., I have seized upon and taken the said property and have the same in my custody: Notice is hereby given that a district court of the United States will be held at the United States court-room in the city of Springfield, on the 3d Monday in June inst., for the trial of the said premises, and the owner or owners and all persons who have or claim any interest are hereby cited to be and appear at the time and place aforesaid, to show cause,
45 if any they have, why a final decree should not pass as prayed.

D. L. PHILLIPS, *U. S. Marshal.*

Springfield, Ill., June 4, 1864.

Certificate of publication.

The undersigned, publishers of the Illinois State Register, a newspaper published at Springfield, Illinois, do hereby certify that the annexed notice was published in said paper for fourteen days successively, the first publication thereof having been made on the 5th day of June, A. D. 1864, and the last on the 20th day of June, A. D. 1864.

Ill's State Register Printing Co., publishers Illinois State Register, per—

D. O. CROWLEY.

Endorsed: Filed June 20th, 1864.

GEO. P. BOWEN, *Clerk.*

And on the fourth day of June, in the year last aforesaid, the following further proceedings were had in said court and entered of record, to wit:

Order of sale pendente lite.

THE UNITED STATES
v.
1,000 BALES OF COTTON } In prize.

It appearing to the court from the return of the marshal to the writ of monition issued in this cause, that he has attached the said one thousand
46 bales of cotton, and that the same is perishable and liable to be destroyed, it is thereupon ordered by the court that the said property be sold by the marshal under and by virtue of a writ of venditioni exponas, to be issued by the clerk of this court in accordance with the rules and practice of the court, and that upon making such sale the marshal deposit the proceeds thereof with the assistant treasurer of the United States at St. Louis, subject to the order of the court. It is further ordered that said writ be made returnable on the fourth Monday of June inst., and that the marshal give notice of said sale by publication in the newspaper designated by the court, and also in one or more newspapers published in the cities of Chicago, St. Louis, Cincinnati, and Cairo.

Whereupon a writ of venditioni exponas was issued, directed to the marshal of said district to execute, and was afterwards, to wit, on the twenty-ninth day of July, in the year last aforesaid, returned by said marshal duly executed, which said writ, together with the return of the marshal thereto, and the certificate of deposit filed therewith, are in the words and figures following, to wit:

47 *Venditioni exponas.*

THE UNITED STATES OF AMERICA,
Southern district of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

Whereas a libel was filed in the district court of the United States for the

southern district of Illinois on the third day of June, in the year of our Lord one thousand eight hundred and sixty-four, by Lawrence Weldon, district attorney of the United States for said district, in the name and behalf of the United States and of all others concerned against one thousand bales of cotton, praying that the same may be condemned and sold for the causes in said libel alleged; and whereas the said one thousand bales of cotton has been attached by process issued out of said district court in pursuance of the said libel, and is now in custody by virtue thereof, and such proceedings have been thereupon had that by the decree of said court in this cause made on the fourth day of June, in the year of our Lord one thousand eight hundred and sixty-four, the said one thousand bales of cotton was ordered to be sold by you, the said marshal, after giving ten days' notice of such sale according to law: Therefore you, the said marshal, are hereby
48 commanded to cause said one thousand bales of cotton to be sold in manner and form, upon the notice and at the time and place required by law, and that you deposit the money arising from such sale with the assistant treasurer of the United States at St. Louis; and have you a certificate thereof, together with a return of your proceedings hereon, in said court, at Springfield, in said district, on the fourth Monday of June, in the year of our Lord one thousand eight hundred and sixty-four, and have you also then and there this writ.

Witness the Hon. Samuel H. Treat, judge of our said court, this fourth
[L. S.] day of June, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth.

GEO. P. BOWEN, *Clerk.*

Marshal's return.

By virtue of this writ, I sold, on the 22d day of June, A. D. 1864, the within-described cotton for the sum of four hundred forty-seven thousand four dollars and ninety-six cents, and have deposited the same with the assistant U. S. treasurer at St. Louis, Mo., the certificate of which deposit is herewith returned.

D. L. PHILLIPS, *U. S. Marshal.*

July 28th, 1864.
Endorsed: Filed July 29, A. D. 1864.

GEO. P. BOWEN, *Clerk.*

Notice of sale.—United States marshal's sale in admiralty.

By virtue of a writ of sale issued out of the United States district court for the southern district of Illinois, in admiralty, dated on the 4th day of June, A. D. 1864, will be sold at public sale to the highest and best bidder, for cash, at Cairo, in said district, on the 22d day of June, A. D. 1864, the following-described property, to wit: 1,000 bales of cotton, the same having been ordered by the court to be sold for the benefit of whom it may concern.

D. L. PHILLIPS, *U. S. Marshal.*

Springfield, Ills., June 6, 1864.

Certificate of publication.

The undersigned, publishers of the Illinois State Register, a newspaper published at Springfield, Illinois, do hereby certify that the annexed notice was published in said paper for ten days successively, the first publication thereof having been made on the 7th day of June, A. D. 1864, and the last on the 18th day of June, A. D. 1864.

Ills. State Reg. Print'g Co., publishers Illinois State Register, per—

D. O CROWLEY.

Endorsed: Filed July 29th, 1864.

GEO. P. BOWEN, *Clerk.*

50 *Certificate of deposit.*

$447,004 96. OFFICE OF THE ASSISTANT TREASURER U. S.,
St. Louis, Mo., July 27, 1864.

I certify that D. L. Phillips, U. S. marshal for the southern district of Illinois, has this day deposited to the credit of the district court of the United States for said district, in the case of the United States *vs.* one thousand bales of cotton, four hundred forty-seven thousand and four 96-100 dollars proceeds of sale in said cause.

H. H. WERUSE,
Ad'g Assistant Treasurer.

(Original.)
Endorsed: Filed July 29th, 1864.

GEO. P. BOWEN, *Clerk.*

On Tuesday, the seventh day of June, in the June term of said court, in the year last aforesaid, the following proceedings were had in said court, and entered of record, to wit:

Motion to consolidate causes.

THE UNITED STATES
vs.
650 BALES OF COTTON, &c.

THE UNITED STATES
vs.
788 BALES AND 52 SACKS COTTON, &c.

THE UNITED STATES
vs.
409 BALES AND 139 SACKS COTTON.

THE UNITED STATES
vs.
1,000 BALES OF COTTON.

51 Now comes Messrs. Edwards and Brown, Hay and Cullom, proctors for Cornelius Voorhies *et al.*, and enter their motion to consolidate the above-entitled causes.

And afterwards, to wit, on Tuesday, the 14th day of June, in the June term of said court, in the year last aforesaid, the following further proceedings were had in said court, and entered of record, to wit:

Order of consolidation.

THE UNITED STATES
vs.
550 BALES OF COTTON, &c.

THE UNITED STATES
vs.
788 BALES AND 52 SACKS COTTON.

THE UNITED STATES
vs.
409 BALES AND 139 SACKS COTTON.

THE UNITED STATES
vs.
1,000 BALES OF COTTON.

The court having fully considered, and being now sufficiently advised

upon the motion heretofore entered by Messrs. Edwards, Brown, Hay, and Cullom, proctors for Cornelius Voorhies and others, to consolidate the above-entitled causes, it is ordered and decreed that said motion be sustained, and that said causes be consolidated.

52 And afterwards, to wit, on Thursday, the sixteenth day of June, in the June term of said court, in the year last aforesaid, the following further proceedings were had in said court, and entered of record, to wit:

Order granting leave to take depositions.

It is ordered by the court that either party to any prize case pending in this court have leave to take depositions therein upon commission, or upon giving the adverse party legal notice of the time and place of taking the same.

And afterwards, to wit, on the seventeenth day of June, in the year last aforesaid, came William M. Springer, agent of Elizabeth Alexander, claimant of seventy-two bales of the cotton libelled herein, and filed in the office of the clerk of said court, his answer in said entitled cause, which said answer is in the words and figures following, to wit:

Claim and answer.

United States district court of the southern district of Ills., in admiralty.

UNITED STATES OF AMERICA,
Southern district of Illinois:

The answer of William M. Springer, agent of Elizabeth Alexander, the owner and claimant of seventy-two bales of cotton, to the libel of

53 Lawrence Weldon, on behalf of the United States, as well as all other persons concerned, against 650 and 788 and 409 and 1,000 bales of cotton, contained in the consolidated case, the said seventy-two bales being a part of said lots in the said libel mentioned. And now comes William M. Springer, of the county of Sangamon, and State of Illinois, agent of Elizabeth Alexander, the owner of the said seventy-two bales of cotton above mentioned, and for answer to the libel of the said Weldon, against said cotton, doth allege and propound as follows, to wit:

First. That the said Elizabeth Alexander is the true and bona fide owner of the said cotton, and that he, the said William M. Springer, is duly authorized by the said Elizabeth Alexander to put in a claim in her behalf to the said cotton in this suit.

Second. That it is true, as alleged in said libel, that the said cotton was seized by persons belonging to the navy of the United States; but this respondent denies that the said cotton was lawful prize of war, or that it belonged to the enemies of the United States, or that the same was seized on waters navigable to the sea by vessels of ten or more tons burden; but, on the contrary, respondent avers that the said cotton was seized on land, at the plantation of the said Elizabeth Alexander, where the same was

54 stored in a gin-house, or warehouse, for safe-keeping.

Third. This respondent further alleges that the said Elizabeth Alexander is a citizen of the State of Louisiana, and of the United States, and that she has never taken any part whatever in the present rebellion against the government of the same.

Fourth. This respondent further alleges that he is a citizen of the State of Illinois, and of the United States. Wherefore this respondent prays this honorable court to pronounce against the demand of the libellant in his

aforesaid libel mentioned and set forth as to the said seventy-two bales of cotton, in the said lots of 650 and 788 and 409 and 1,000 bales contained, in said consolidated case, and that the same be restored to him as the agent of the said Elizabeth Alexander; and in case the same has been sold by order of this honorable court, then that the proceeds of the said seventy-two bales be paid over to this respondent, together with his costs.

WM. M. SPRINGER.

UNITED STATES OF AMERICA,
Southern district of Illinois:

William M. Springer, being duly sworn, deposes and says that the statements contained in the above answer are true, to the best of his
55 knowledge, information, and belief.

WM. M. SPRINGER.

Subscribed and sworn to before me this 17th day of June, A. D. 1864.

GEO. P. BOWEN, *Clerk.*

Endorsed: Filed June 17th, 1864.

GEO. P. BOWEN, *Clerk.*

And afterwards, to wit, on Monday, the fifth day of December, in the December special term of said court, in the year last aforesaid, the following further proceedings were had in said court, and entered of record, to wit:

Decree and appeal.

THE UNITED STATES *vs.* SIX HUNDRED AND FIFTY BALES OF COTTON, ONE HUNDRED COILS OF ROPE, SIXTEEN BALES EIGHT ROLLS AND ONE HUNDRED AND SIXTY PIECES OF BAGGING AND 29 PIECES OF LEATHER, SEVEN HUNDRED AND EIGHTY-EIGHT BALES AND FIFTY-TWO SACKS OF COTTON, FOUR HUNDRED AND NINE BALES AND ONE HUNDRED AND THIRTY-NINE SACKS OF COTTON, AND ONE THOUSAND BALES OF COTTON.	In prize.

Now comes the district attorney, and also William M. Springer, agent of Elizabeth Alexander, claimant of seventy-two bales of the cotton libelled herein, by Messrs. Hay and Cullom, and Stewart, Edwards and Brown,
56 his proctors, and thereupon this cause came on to be heard upon the libels, the claim and answer of the said claimant, and the testimony on file, and the court having heard the same, and being sufficiently advised in the premises as far as that the libels in this cause are not sustained as to the said seventy-two bales of cotton claimed by Elizabeth Alexander. And it appearing to the court that the said cotton has been sold by the marshal, under and by virtue of writs of venditioni exponas issued in this cause, and that the proceeds thereof have been deposited with the assistant treasurer of the United States at St. Louis, subject to the order of the court:

It is therefore ordered, adjudged, and decreed by the court that the proceeds of the said seventy-two bales of cotton be paid to the said claimant. And thereupon the district attorney prays an appeal to the Supreme Court of the United States, which is allowed.

The following depositions and documents were read in evidence upon the hearing of said cause, to wit:

Deposition of Francis M. Ramsay.

Deposition of Francis M. Ramsay, in behalf of all the libellants, taken before George P. Bowen, clerk of the district court of the United States
57 for the southern district of Illinois, at his office, in the city of Springfield, in said district, on the 3d day of October, A. D. 1864.

My name is Francis M. Ramsay. I am a lieutenant commander in the navy of the United States; was in command of the United States steamer Choctaw, of the Mississippi squadron, while she was attached to the Red, Black, and Ouachita Rivers expedition. When we entered on the Ouachita expedition the whole country from the mouth of the Black River to Ouachita City, as far as I went, was in possession of the rebels. On arriving at Monroe, by order of lieutenant commander J. P. Foster, commanding Ouachita River expedition, I landed with 150 armed men and took possession of the city. I was introduced to a Mr. Ray, whose first name, according to my best recollection and belief, was John, as the mayor of the town of Monroe, and was informed he could give me any information I desired. I questioned him but was unable to get a single answer of information. On our way up to Monroe, at a plantation owned by or called Simmons's plantation, we seized, to the best of my recollection, about 700 bales of cotton, each bale of which I examined and found "C. S. A." plainly marked on each. One of the
58 vessels of this expedition was fired upon going up to Monroe, between Monroe and Harrisonburg, and another on returning. Between Monroe and Ouchita City I seized about 700 bales of cotton. It was in two lots, one lot being on Swan's plantation, to the best of my recollection, the other, I think, on Bartlett's plantation, all of which was plainly marked when found "C. S. A." on each bale. On our way down the river, on a plantation of Ray Bro's, known as Rays' plantation, I seized a quantity of cotton; I don't remember the number of bales, but each bale was marked "C. S. A.," and about 350 bales of cotton in slabs without any mark whatever upon it. This last slab cotton, Mr. Ray, who was on the place, whose name I think was James L., but am not positive, informed me was the joint property of himself and his brother, John Ray. I seized this latter cotton by order of Lieutenant Commander J. P. Foster, commanding that expedition. It was between the 5th and 20th days of April, A. D. 1864, these several seizures were made.

At Trinity, at the junction of Black River, the Tensas, Ouachita, and Little River, the rebels had two forts. At Harrisonburg, on the Ouachita River, they have and had five forts. At Monroe they had one, and I think
59 two forts. About the first of March, 1864, the three guns in the forts at Trinity were captured by me while in command of an expedition up the Ouachita River, and the day following we had a severe fight with the forces under General Polignac, at Harrisonburg. While the vessels were at Monroe a skirmish took place between the crew of the United States steamer Ouachita and the rebels a few miles above, at a little town, the name of which I don't now remember. It was the first town above Monroe, on the opposite bank, I think called Trenton. This place, Monroe, had been the rebels' headquarters and of the rebel General Lidell.

Cross-interrogatories by Messrs Hay, Edwards, and Springer.

The cotton spoken of was all sent to Cairo, so far as I know. They were ordered to be sent to Cairo.

Ques. Did the person of whom you speak, on the Ray plantation as James L. Ray, claim the ownership of any other cotton found upon that plantation but the cotton in slabs? and state what he may have said about the ownership of the cotton not in slabs found upon his plantation, and marked
60 "C. S. A."

Ans. He claimed only the cotton in slabs, but said he had not mentioned this other cotton to Captain Foster, as he had hoped to make use of it for his own benefit, or words to that effect.

Re-examined by L. Weldon, esq.

Ans. I went up Red River as far as Alexandria. The whole country from the mouth of that river to Alexandria was in the possession of the rebels at the time we entered the river. About 12 miles below Fort De Russey the river was obstructed, as we found, by two rows of piles driven across and logs drifted down against the piles. Fort De Russey, with its guns and part of its garrison, was in possession of our troops when I got there. I also found Alexandria in possession of the naval and military forces of the United States when I reached there. This was about the middle of March, 1864. The only cotton I seized on this expedition up Red River was 17 bales in Pineyville, each bale marked "U. S. A.;" also 17 bales about two miles from Pineyville, belonging to a Mr. Gray; also 30 bales belonging to Dr. Maddox, about three miles from Alexandria; also 81 bales belonging to a Mrs. H. Robertson, about two miles from the river, back of Pineyville. I understand the H. in the name of Mrs. H. Robertson applied to her
61 husband and not to her name. The whole of the cotton captured on this expedition was ordered to be, and was, sent to Cairo, according to my best knowledge and belief.

Deposition of James P. Foster.

Deposition of James P. Foster, in behalf of the libellants, taken before George P. Bowen, clerk of the district court of the United States for the southern district of Illinois, at his office, in the city of Springfield, in said district, on the 26th day of November, A. D. 1864.

Int. 1st. What is your name, age, and occupation?

Ans. Jas. P. Foster; age thirty-seven years; I am lieut. commander in the United States navy.

Int. 2d. Were you engaged in the Red River expedition?

Ans. I was.

Int. 3d. In what branch of the United States service?

Ans. In the naval service.

Int. 4th. By what branch of the United States service was the Red River expedition conducted, when did it commence, and how far up the Red
62 River did said expedition go? What obstructions did it meet from Confederate authorities, and in whose military possession was the country before said expedition went up Red River?

Ans. The expedition was conducted by the naval service on the river; by the army on the land, both acting together. Said expedition started up the river in the month of March, 1864; the exact date I don't know. I know very little about the Red River expedition. I think it about the 20th of March We met obstructions such as forts, rafts, and guerrillas, and it was in the military possession of the rebel government, or you might say in the hands of the enemy.

Int. 5th. Who commanded the expedition on the river?

Ans. Admiral David D. Porter.

Int. 6th. State what you know of the seizure of cotton on said expedition.

Ans. On Red River I only know of one case; that I was connected with; that was Mrs. Robertson's, who lived about two miles back of Piney-
63 ville, opposite Alexandria. I only know of about 130 bales taken from her. Mrs. Robertson was a widow. Some of her cotton was raised two years previous, and some of it was five or six years of age.

Int. 7th. Were you engaged in the Ouachita expedition? If so, when did said expedition commence, by whom was it conducted, how far up the river did it go, what obstruction or resistance did it meet from the so called Confederate forces or government, and in whose military possession was the country penetrated by said expedition?

Ans. I was engaged in that expedition; it commenced on the 6th of April, 1864. I was the commander of the expedition, and we went with a part of my boats as far as Ouachita City. I think it some over 200 hundred miles up the river; I am not certain. We met with very little obstruction on the river until we reached Monroe. There my pickets were attacked by the enemy's cavalry. The country where we went was in the military possession of the enemy.

Int. 8th. What do you know, if anything, of the seizure of a lot of cotton claimed by a man by the name of Le More?

64 Ans. All cotton claimed by Le More & Co. was marked "C. S. A." with very few exceptions. Whilst I was taking on board the cotton claimed by this firm Mr. Le More came to me and represented himself as the agent of the house of Le More & Co. He stated in presence of witnesses that they had received this cotton in exchange for greyback clothing which they forwarded to Kirby Smith's army. He not only made this statement in the presence of three or four officers; he also gave me an affidavit signed by himself, which affidavit was sent to Admiral Porter. This cotton, marked "C. S. A.," was seized about one and a half miles below Monroe, on the opposite side of the river, and not as I know on any particular plantation. Mr. Le More stated that when they were burning cotton through that section their cotton was protected by Kirby Smith's army. This he stated in answer to my question why the cotton was not burned with the rest. There was 300 and odd bales; it is 309 bales I think. I speak of all the cotton claimed by that firm wherever taken. It was taken from different points, and at the Simmons plantation there was 810 bales I think captured there.

65 Int. 9th. Please examine the paper now handed you, marked Exhibit "A," and state what you know about it.

Ans. I took that affidavit and read it to Le More, who said it was correct. He also said that the cotton he paid for in gold was his own cotton, comprising a lot of some 200 bales in another lot. Before this talk with Le More I had seized all the cotton as we went up the river. I seized it as we went, put men in charge of it, and directed men to put it on the boats. A good deal of it I had guards over, although it was not on the boats. Le More saw us taking it on board. When he came down and saw us taking this cotton was when we had this talk, and I took this affidavit shown me, and his affidavit I have spoken of. I think over two thirds of the cotton claimed by Le More was marked "C. S. A." The conversation which I had with Le More referred to all the cotton claimed by Le More & Co. in all that section of country. This cotton taken from Simmons's plantation, and the 309 bales was all taken below Monroe.

Cross-interrogatories by Judge Logan.

Ques. What was the nature of the obstructions you met with below Monroe?

Ans. We met with no military obstructions. They had all been cleared away by an expedition commanded by Captain Ramsey some five weeks before.

66 *Exhibit "A," referred to in deposition of James P. Foster.*

U. S. S. "LAFAYETTE," *April 11th*, 1864.

We, the undersigned officers, heard Mr. Jules Le More acknowledge that the cotton taken on board by the U. S. S Ouachita belonged to G. A. Le More & Co., of which firm he acknowledges himself the agent. Said cotton was purchased from the Confederate government, for which the firm exchanged provisions and clothing. We also heard the same gentleman (Jules Le More) say that this cotton was paid for in gold, at twenty cents (20) per lb. The number of bales taken was three hundred and nine (309.)

BYRON WILSON, *Lt. Com'd'r.*
J. S. WATSON, *Act. Master.*
WM. HARRIS, *Act'g Ensign.*

Subscribed and sworn to before me this 11th day of April, 1864.

JAS. P. FOSTER,
Lieut. Com'd'r U. S. N., Com'd'g 2d dist. Miss. River.

67 *Deposition of W. W. Withenbury.*

Deposition of W. W. Withenbury, taken before George P. Bowen, clerk of the district court of the United States for the southern district of Illinois, at his office, in the city of Springfield, in said district, on the 6th day of September, A. D. 1864.

Witness has been in the steamboat business on Red River, La., for 20 years, and is well acquainted about Alexandria, having resided principally for the last two years at that place; was at Alexandria when Gen. Banks's late expedition and the naval expedition under Commodore Porter arrived at that place, and remained there until near the time the place was evacuated by the United States forces. Witness is well acquainted with Jacob Walker, who is a merchant of Alexandria and has been a resident there for several years. Said Walker is, so far as witness could learn or understand, loyal to the government of the United States; was so regarded by those acquainted with his sentiments; never knew or heard of his aiding or assisting the rebellion in any way; knows that said Walker had on hand, and had had for more than a year previous to said expedition of Gen. Banks, a considerable amount of cotton—more than 100 bales—which he had taken in and received from customers and purchased from planters in the
68 way of trade. Some time immediately previous to the arrival of Commodore Porter's expedition the Confederate authorities ordered all cotton to be removed out of Alexandria, or otherwise it would be burnt by the Confederate authorities. Under this order Walker removed his cotton from Alexandria out about a mile and a half or two miles off; knows from statements made to him that from sixty to seventy bales of this cotton was seized and taken by the naval authorities under Commodore Porter whilst at Alexandria. Commodore Porter asked witness if he knew Jake Walker, (meaning Jacob Walker;) inquired of witness what his character and standing was. On witness replying that he was all right and a loyal man, he said that his boys had got sixty or seventy bales of his cotton out in the woods, and said he would give it up to him. Walker in conversation with witness afterwards informed him that he had sold his claim for the cotton to William Butler.

Examined by Mr. Weldon, U. S. att'y.

Quest 1. What interest have you, if any, in the result of this suit?
Ans. No pecuniary interest whatever. I feel interested in loyal persons

having their rights; that's all. I appear here at Mr. William Butler's
69 request. This cotton I have testified about was about two miles from the village of Alexandria at the time Fort De Russey was taken It was raised more than two years previous, and mostly raised in 1861, probably. I don't know that the gunboats took this particular cotton. They were taking the cotton from the opposite side of the river from Alexandria soon after they arrived, which was 15th or 16th March, 1864, and they took it all from that side of the river about that time. I know nothing of the power of attorney shown me, except I recognize Walker's signature to it. I was five miles out of town on the night they took Alexandria, the 15th, and on the flag-ship the next night of March 16th, 1864. I first saw Mr. Butler in April. I think I did not see him in March. The gunboats got away about the 15th of May, and were driven out by the rebels. They got out of the river as soon as they could. They would have come away sooner if they could, but had to stay and build a dam to get the gunboats away. They effected an escape from that country as soon as they could. As soon as the Federal forces left, the country in and around Alexandria fell into the possession of the rebels
70 again. They harassed the army and navy both till they got down to the mouth of Red River. The conversation which I testify to as having had with Admiral Porter was on his flag-ship. I don't remember the date. I was on his ship almost every day, and therefore don't remember the day. I do not remember who was present at the particular time, for we had frequent conversations, and his officers and sometimes others were present, sometimes one and then others, but I don't now remember any one was there but his officers, who were at the tables writing. I never heard Admiral Porter anything about Mr. Butler's purchasing cotton. Walker was a German by birth and a merchant by occupation. I suppose it was Walker's cotton when it was seized.

The foregoing deposition was taken in said cause in behalf of William Butler, claimant of sixty-three bales of cotton, and by consent was read in evidence in the claim of Elizabeth Alexander, so far as applicable to her claim.

71 *Deposition of James W. McLaughlin.*

Deposition of James W. McLaughlin, in behalf of the claimants, taken before George P. Bowen, clerk of the district court of the United States for the southern district of Illinois, at his office, in the city of Springfield, in said district, on the 28th day of June, A. D. 1864.

1st quest. State your name and residence.

Ans. My name is James W. McLaughlin; reside in Columbia, California.

2d quest. State whether at any time you resided on Red River, La. If so how long; and state your whereabouts at the time of and during the late expedition of Gen'l Banks and Admiral Porter up said river.

Ans I came to Red River in the neighborhood of Alexandria, parish of Avoyelles and Rapides, in 1844, and resided there till Dec. 1st, 1849; I resided a part of the time in one parish, and part in the other; I came from California to Alexandria in May, 1863, starting from California some time in November previous, and came through Mazatlan, in Mexico. I arrived at Alexandria in May, 1863, in the latter part of May. Since then I have been in the parishes where I formerly resided, Avoyelles and Rapides.

3d quest. State what your business was whilst residing on Red River formerly, and since your return from California.

Ans. When I resided there the first time I attended a plantation for Cornelius F. Voorhies most of the time; during the latter part of the time I kept a warehouse near Alexandria. After I came back from California I kept a

plantation of the claimant, Voorhies, who was my brother-in-law, and was absent from home a portion of the time.

13th quest. What was the practice of the Confederate government in regard to requisitions for labor or property upon citizens? Was the consent of the citizen ever asked, or was the requisition made and enforced without the owner's consent?

Ans. They first received a written requisition; if it was not complied with, a squad of men would then enforce it.

73 *Deposition of James W. McLaughlin.*

Deposition of James W. McLaughlin, in behalf of the claimant, taken before George P. Bowen, clerk of the district court of the United States for the southern district of Illinois, at his office, in the city of Springfield, in said district, on the 28th day of June, A. D. 1864.

1st quest. Were you acquainted with Mrs. Elizabeth Alexander? If so, state her residence, occupation, how long you have been acquainted with her.

Ans. I am acquainted with her; she lives one mile from Voorhies on Red River, in the parish of Avoyelles, State of La. She is engaged in cotton planting. I have been acquainted with her about 20 years. She is a widow, and has been one three years. She is about 65 years old, I think.

2d quest. State, if you know anything in reference to the raising and ownership of cotton by Mrs. Alexander, where said cotton was raised, and where stored.

Answer. She had about 70 bales of cotton stored away in a warehouse about a mile from Red River on her land. She claimed to own it (the cotton)

3d quest. State if the warehouse in which this cotton was stored is the same warehouse referred to by you in your deposition in the case of the claim of Cornelius Voorhies, and whether said cotton was stored with the

74 50 bales mentioned in your said deposition as having been sold by Mrs. Alexander to said Voorhies.

Ans. It was the same, and all stored and mixed together in the warehouse.

4th quest. What was the whole quantity in said warehouse in the last of Feb'y, 1864?

Ans. One hundred and twenty bales I know of. I could not count them certain in the way they were stowed.

5th quest. State if you know of any marks or anything by which this cotton could be identified?

Ans. The only way I could identify it was, the baling was put on so as to seam the same across the centre of the bales on the end. There was no marks on it at that time.

6th quest. State, if you know, what became of said cotton.

Ans. I can't answer that, or at what time it left the warehouse. A day or two before I left there I saw the cotton there—at the time I went to Point Coupee, as stated in my deposition in the claim of Voorhies. It was gone when I came back to that neighborhood.

75 7th quest. Have you since seen this cotton or any of it; when, and under what circumstances?

Ans. I saw about 20 bales I could recognize at Cairo in lot called 650. The same lot was sold by the U. S. marshal on the 8th of June, 1864. I came there to, and looked over the whole lot of cotton there. I was looking up Voorhies's cotton.

8th quest. State what you may know of the loyalty of Mrs. Alexander to

the U. S. government, and if you ever knew her at any time to give any aid or comfort to the present rebellion.

Ans. I never knew her to be disloyal in anything, and never knew her to aid or comfort the rebellion.

9th quest. Do you know of Mrs. Alexander's being forced in any way to aid the rebellion? If so, state how, and when.

Ans. She was forced to send some hands, a team, and some tools to work on the fortifications on Fort De Russey. I was present at the time, and she said she was poor and a widow, had no hands to spare, and had nothing to do with the war. This was in December last.

76 *Deposition of James H. C. Barlow.*

Deposition of James H. C. Barlow, in behalf of the claimant, taken before Hugh Madden, notary public and special commissioner, at his office, in the city of New Orleans, Louisiana, on the 17th day of September, A. D. 1864.

Interrogatory first. State your name, occupation, and residence.

Answer to first interrogatory. My name, James H. C. Barlow; very nearly forty years; a lawyer by profession; my present residence is the city of New Orleans; my late residence, previous to 13th May last, Alexandria, Rapides Parish, La.

Interrogatory second. Were you acquainted with Elizabeth Alexander? If so, state how long you have been acquainted, and how you became acquainted with her; state also her residence and occupation.

Answer to second interrogatory. I was and am. I am acquainted with her from my childhood. I have often on her plantation; her residence is the parish of Avoyelles, and occupation a planter.

77 Interrogatory third. State your whereabouts at the time and during the late expedition of Gen. Banks and Admiral Porter up Red River.

Answer to interrogatory third. Alexandria, Louisiana.

Interrogatory fourth. Do you know of the taking or seizing of any cotton by the United States navy or gunboats, on that expedition, belonging to Elizabeth Alexander? If so, state your opportunities of knowing the same. State about what time the same was taken, and what quality or number of bales was taken; where said cotton was taken from, and by what boat taken. If there were any marks upon said cotton, state what marks.

Answer to fourth interrogatory. Yes, I do. I saw a receipt given by the officer of the U. S. boat Ouchita, and the ensign of said boat informed me of the fact that they had taken from her plantation, on Red River, one hundred and twenty-two bales of cotton, being the number for which said receipt was given; also, that Admiral Porter stated to me that cotton had been taken from said Mrs. Alexander's plantation. Said cotton was taken on or about the 26th day of March last. I do not know as to the quality.

78 The number of bales one hundred and twenty-two. It was taken from the plantation of Mrs. Alexander, parish of Avoyelles, Red River, by the boat Ouchita. If there were any marks on said cotton I do not know. I expect there were fifty bales marked "C. F. V."

Interrogatory fifth. State when you last saw said cotton before it was taken, and whether there were any such marks as "C. S. A." upon said cotton.

Answer to fifth interrogatory. About two or three months; there were no such marks as "C. S. A." on said cotton.

Interrogatory sixth. State any other matter or thing within your knowledge touching the character of said Elizabeth Alexander, and touching her claim herein, that may be of advantage to the said claimant, or any of the parties to this suit.

Answer to sixth interrogatory. I know that the said Elizabeth Alexander always has been, and is, a loyal citizen of the United States; that she has taken the amnesty oath.

First cross-interrogatory. What interest have you in the result of this case? Has not claimant disposed of her interest in the lot of cotton you have testified about?

79 Answer to first cross-interrogatory. I have none. She has disposed of, by sale, of fifty bales to C. F. Voorhies; there were fifty bales which were conditionally sold to Judge A. Cazabot, which conditions were never complied with by him.

Second cross-interrogatory. Of whom did the claimants purchase the cotton that you testify about in this case?

Answer to second cross-interrogatory. She did not purchase, but raised it herself on her own plantation.

Third cross-interrogatory. What do you know of the person from whom the claimant purchased cotton having aided and assisted the present rebellion in the form of military services, or in the giving of money or property to aid the so-called Confederate government?

Answer to third cross-interrogatory. She never did purchase said cotton.

Fourth cross-interrogatory. Who raised the lot of cotton about which you testify?

Answer to fourth cross-interrogatory. Mrs. Elizabeth Alexander.

80 Fifth cross-interrogatory. What do you know of the person who raised this cotton aiding and assisting the present rebellion? When was such assistance given; and in what form was it given?

Answer to fifth cross-interrogatory. Mrs. Alexander raised the cotton. She never gave any aid or assistance to the so-called Confederate government, as far as I know.

Sixth cross-interrogatory. Where does the claimant in this case reside? And how long have they resided in their present location?

Answer to sixth cross-interrogatory. Mrs. Alexander, most of the time since 1835, in the parish of Avoyelles, Red River, and resides there still.

Seventh cross-interrogatory. What do you know of the claimant in this case doing in aiding and assisting the present rebellion?

Answer to seventh cross-interrogatory. Nothing.

Eighth cross-interrogatory. Where has the party been since the commencement of this rebellion; and in what business has she been engaged; and in what business was she engaged before the commencement of the rebellion?

81 Answer to eighth cross-interrogatory. On her plantation in Avoyelles Parish, as a planter, both before and since the rebellion.

Ninth cross-interrogatory. When and where did you first see the cotton about which you have testified in this case, and how long was your attention called to it?

Answer to ninth cross-interrogatory. I first saw this cotton in the fall of 1862. I was on the plantation often.

Tenth cross-interrogatory. State what you may know of the claimant in this case selling, or attempting to sell, cotton to the agent of the so-called Confederate government.

Answer to tenth cross-interrogatory. She never did sell, or attempt to sell, any.

Eleventh cross-interrogatory. When did the Federal government get possession of the country where the claimants live?

Answer to the eleventh cross-interrogatory. In the spring of 1863.

82 Twelfth cross-interrogatory. Is it not true that while the Confederate forces were in possession of the country where claimant lives

that they aided and assisted the Confederate forces? And were not the claimants in full fellowship with the Confederate authorities?

Answer to twelfth cross-interrogatory. It is not true. She never aided or assisted the Confederate forces; and never was, to my knowledge, in fellowship with the Confederate authorities.

Thirteenth cross-interrogatory. What do you know of the Confederate officers being entertained at house of claimant?

Answer to thirteenth cross-interrogatory. I know that occasionally some one or two Confederate officers, who were sick, came to the house, and probably one or two others, visiting young ladies who were at the house.

Fourteenth cross-interrogatory. How many negro hands did the claimant use in the raising of the cotton about which you testify?

Answer to fourteenth cross-interrogatory. About twenty-five.

83 Fifteenth cross-interrogatory. What have you done in aiding and assisting the present rebellion?

Answer to fifteenth cross-interrogatory. Nothing.

Sixteenth cross interrogatory. How many sons have the claimants in the rebel army?

Answer to sixteenth cross-interrogatory. None that I know of. She has but two sons; one within the Federal lines, and the other under military age, and who has taken the amnesty oath.

Seventeenth cross-interrogatory. What do you know of claimants selling cotton to agents of Confederate government in the year 1861, 1862, and 1863?

Answer to seventeenth cross-interrogatory. She did not sell any.

Eighteenth cross-interrogatory. What did claimant do with cotton raised in the years 1861, 1862, and 1863?

Answer to eighteenth cross-interrogatory. The crop about which I testify was raised in 1861. The crop of 1862 was burned, and in 1863 she raised no cotton.

84 Nineteenth cross-interrogatory. If you speak of marks at Cairo, do you know anything of such marks except that you saw them on certain bales of cotton?

Answer to nineteenth cross-interrogatory. I did not speak of any marks at Cairo. I was not in Cairo since 1857.

Twentieth cross-interrogatory. Is it not true that the claimants were always willing to aid and assist a rebel soldier, but would show no hospitality to a federal one?

Answer to twentieth cross-interrogatory. It is not true; she was equally kind to either in distress.

Twenty-first cross-interrogatory. How many times have you seen rebel officers being entertained at claimant's house?

Answer to twenty-first interrogatory. Some twice or three times.

Twenty-second cross-interrogatory. Is it not true that while Confederates had possession of country where claimants lived, that the house of claimants was headquarters for rebel officers?

85 Answer to twenty-second cross-interrogatory. No, it is not true.

Deposition of Wellington W. Withenbury.

Deposition of Wellington W. Withenbury, in behalf of the claimants, taken before George P. Bowen, clerk of the district court of the United States for the southern district of Illinois, at his office, in the city of Springfield, in said district, on the third day of September, A. D. 1864.

Int. 1st. State your name, occupation, and residence for several years last past.

Ans. My name is Wellington W. Withenbury; my occupation has been a steamboat captain for twenty years, on Red River, La., for two years past. My headquarters during the latter period has been principally at Alexandria, on Red River, La. I left that place last May, just before the Federal forces did. I reside now at Cincinnati, Ohio. My family have resided there all the time for twenty-six or seven years, but I have been south steamboating each year, and every winter I have spent south, and was caught there when the rebellion broke out.

86 Int. 2. Are you acquainted with Cornelius Voorhies and Mrs. Elizabeth Wilson, Mrs. Elizabeth Alexander, and Thomas K. Smith? If so, state your acquaintance with each respectively, and their residence.

Ans. I have known them all at least fifteen years; they all reside near Red River, Louisiana; their plantations all come to the bank of the said river. I have had frequent business transactions and intercourse with each, and often been on their plantations on matters of business with some one or all of them.

Int. 3. Did such acquaintance and intercourse with the persons you have named continue after the breaking out of the present rebellion, and until you left that region in May last?

Ans. It did in case of each one but that of Mrs. Alexander. I often saw and talked with her husband after this rebellion broke out, but he died some two years ago, and I have not known so much about her since.

Int. 4. State what you may know relative to the sentiments and conduct of said persons mentioned in interrogatory number two, in regard to the

87 present rebellion, whether they or either of them have ever voluntarily aided, assisted, or encouraged the present rebellion against the government of the United States, and generally what has been their position in regard to the same?

Ans. I know no one of them have ever taken up arms against the government. There was what was called a tithe tax, which was forced in collection; there was also an assessment made and a requisition for labor of slaves and mules, and unless they were furnished the Confederates sent a force and took them, and made a rule of taking double when it was not furnished as required. This was general all through that country. I know whatever has been furnished has been against the wishes, sentiments, and under the protest of these persons. Each one but Mrs. Alexander has so fully and freely expressed themselves to me on this point. I know they have not voluntarily ever aided the rebellion, and Mr. Alexander one week prior to his death spoke to me in the strongest terms against the secession move and in favor of the Union, and so have each of the others, respectively, and have often and continuously done so.

88 Int. 5. State, if you know, what the feeling of the community in that whole section was, and is, as to the present rebellion and secession.

Ans. They were almost unanimously against secession when it commenced, and most particularly in that section, and have so continued since.

Int. 6. State any particular instances you may know of in the conduct of either of the persons referred to in interrogatory two, tending to show their position and feelings towards the government of the United States and towards those friendly to the same.

Ans. I was in Louisiana with my steamboat when the rebellion broke out, and was interdicted by the rebels not to leave the lines. April 12th, 1862, I left New Orleans and went up to Alexandria, on Red River, Louisiana, and soon heard New Orleans was taken, and myself and boat were kept there about two years on that river in the rebel lines against my wishes and sentiments, having from the first been and continued a Union man. When there—

I mean while in the rebel lines—I did nothing voluntarily to aid them,
89 and when Gen'l Banks first came up that river I got a conference with him, explained my position, and he advised me to stay until I could save and get away with my property. In his second expedition, in March, 1864, I saw him again, and arranged, by his advice, and got some of my effects on to the steamboat "John Warner," and when we were coming down Red River we were captured, and forty bales of my cotton; and myself and about thirty others escaped from the boat into the woods, and there I told them of a place of safety for Union men; and they asked me where, and I told them to Cornelius Voorhies's plantation, and I piloted them about fifteen miles through the woods and came to Mr. Voorhies's plantation, and Mr. Voorhies offered to keep and feed us all, although only acquainted with me; and after I had told all as I have stated, he offered to keep us until we could get away safely. And the same evening, while we were talking of going on about six miles to a neighbor's house, where we would be safe, being a place Mr. Voorhies told us about, a gunboat came along, and we came off on her

In reference to Mrs. Wilson, I know she objected and tried to keep
90 her horses, mules, and slaves from being used by the rebels, and when Admiral Porter was there she loaned him fifty or sixty mules and wagons, and negroes to use them. And I know she used to visit the flagship of Admiral Porter, and was in familiar intercourse with him, and was treated by him as a loyal woman.

Under objection, the witness says: Admiral Porter told me he was satisfied Mrs. Wilson was a good and loyal woman, and she should have the cotton he had taken of her, or the proceeds thereof, and he would so arrange it. About the time New Orleans was taken the Confederates issued an order to owners to haul their cotton five miles from the river so Federals could not get it, and if they were likely to, it was to be burnt. Thomas K. Smith refused to move his cotton or sell it to the Confederates, and said he would shoot the first man that tried to burn his cotton, and I know that each of these persons declined to sell their cotton to the rebels or Confederacy as called. In consequence of this they were considered by the Confederates as against aiding them. This I know, for the Confederates had lists of
91 such persons so refusing, and these among them.

Int. 7. State, if you know, whether any and how much cotton was taken by the navy from Thomas K. Smith, when it was taken, and where taken from. Do you know George Smith, where he resides, and whether any cotton was taken from him by the navy, and whether there is more than one George Smith in that section of country?

Ans. I know the United States navy took over 100 bales of cotton from Thos. K. Smith from his plantation, about eight miles below Alexandria, La., about the last of March, 1864. I know a George Smith, and there is but one in that section of country, who lives 30 miles below Alexandria, La.; and raised no cotton; had no cotton to lose or be taken; and I introduced Thomas K. Smith, the man whose cotton was taken by the navy, to Admiral Porter, and they conversed about the cotton which had been taken from his plantation.

Deposition of Cornelius Voorhies.

Deposition of Cornelius Voorhies, in behalf of the claimant, taken
92 before George P. Bowen, clerk of the district court of the United States for the southern district of Illinois, at his office, in the city of Springfield, in said district, on the 6th day of September, A. D. 1864.

Int. Are you acquainted generally with the conduct and sentiments of the

citizens or a majority of them of the parish in which you reside towards the present rebellion, from its commencement until the present time? If so, what do you say it has been?

Ans. There are portions very strong Union and other portions secessionists. In my neighborhood a majority were Union persons, who have not done anything, if they could help it, to aid the rebels, and have aided Union men whenever they could.

(The foregoing objected to by the district attorney.)

Deposition of Cornelius Voorhies.

Deposition of Cornelius Voorhies, in behalf of the claimant, taken before George P. Bowen, clerk of the district court of the United States for the southern district of Illinois, at his office, in the city of Springfield, in said district, on the 17th day of October, A. D. 1864.

93 Int. 1. State your name, and your residence, and your occupation in the months of March and April, 1864.

Ans. My name is Cornelius Voorhies. My residence is in the parish of Avoyelles, on Red River, Louisiana, and have resided there and in that vicinity about thirty years. I am a cotton planter, and that has been my business. I was at home on my plantation in March and April, 1864. My plantation is fifty miles below Alexandria.

Int. 2. Are you the Cornelius Voorhies whose deposition has been heretofore taken in these cases upon the part of some of the intervening claimants?

Ans. I am.

Int. 3. State, if you know, about what time the expedition of Gen'l Banks and Admiral Porter was made up Red River in the spring of 1864, and your whereabouts at that time.

Ans. Fort De Russey was captured, I think, about the 15th day of March, and the United States fleet went on to Alexandria the next day; a portion of the army reached Alexandria, I think, about the same time. I was at home at the time.

94 Int. 4. State, if you know, what points or places on Red River immediately prior to said expedition had been occupied by rebel military forces, and about what time and in what manner such forces evacuated such points, and also state where said rebel forces were about the time of the occupation by the federal forces of Alexandria.

Ans. Fort De Russey and Alexandria were in the possession of and occupied by rebel forces. The Fort De Russey being captured by the land forces, under command of Gen'l A. J. Smith of the federal army, was not evacuated, because there was a fight, and the rebels captured. The rebels evacuated Alexandria, and retreated towards Shreveport, above Alexandria, where the federal forces came up the river. There was no rebel forces there again until about the middle of April, 1864.

Int. 5. During the time you speak of, from the time of the capture of Alexandria until the middle of April, in whose possession was the whole of the country from Alexandria to the mouth of Red River adjacent to Red River, and within what military lines?

95 Ans. It was in possession of the federal army, and within their military lines.

Int. 6. Had or had not the rebel military forces any possession of the cotton of yourself, Mrs. Elizabeth Wilson, William Grimes, Thomas Smith, Mrs. Agalice B. Robertson, Mrs. Elizabeth Alexander, or of the plantations upon which said cotton was raised? What was and had been the situation of said cotton and plantations, with reference to its possession and control, up to the time of taking of the cotton by persons belonging to the United States navy?

Ans. The cotton of the said persons was never in possession or under the control of the rebels or rebel military forces, but had been and remained until the time of the taking thereof by the persons belonging to the United States navy, under the sole control of said respective owners, and so had their respective plantations been. Each of these had been attending to their plantations as they had before the war, with the exception of Mrs. Agalice B. Robertson, who had no plantation.

Int. 7. If you saw any of the cotton taken belonging to the above-named persons, or any of them, state where it was taken from, in what
96 manner taken, and about what time taken, and by whom taken, and what, if anything, was done with the cotton.

Answer. I saw Mrs. Elizabeth Alexander's cotton taken, and my own cotton. It was taken about the 27th day of March, 1864. I also saw from a distance, on the opposite side of the river, the taking Mrs. Elizabeth Wilson's cotton. It was taken from our respective plantations by persons connected with the United States gunboats. The most of the cotton was hauled to the river by wagons pressed from the plantations for that service. Some bales were rolled by hand. I saw the persons taking it mark some of it "C. S. A." Fifty bales of my cotton was taken from Mrs. Elizabeth Alexander's plantation.

Int. 8. State what you may know was being done to establish a civil government, loyal to the United States, in that part of Louisiana during the possession of that part of the country by the federal forces.

Ans. There was an election ordered by Governor Hahn to elect delegates to a convention, which was held, and delegates elected, during the
97 time of the federal occupation.

Int. 9. Have you ever during the present rebellion voluntarily rendered any aid or assistance thereto?

Ans. I have not.

Int. 10. Look at the paper marked "A," here shown you, purporting to be an amnesty oath subscribed by you, and state whether the signature to said paper purporting to be yours was written by you, and whether you swore to the same at the time, and before the officer, as purports by the certificate thereto.

Ans. That document I have looked at; I subscribed and swore to, as it purports by said certificate.

Int. 11. Are you acquainted with Victor Wolf? And if so, state whether he was acting at the date of his said certificate to said paper as assistant provost marshal at Alexandria under the federal authorities, and whether the signature purporting to be his, to said paper, was subscribed by him in your presence.

98 Ans. I am acquainted with Victor Wolf. He was acting as assistant provost marshal under the federal authorities, the 24th day of March, 1864, at Alexandria, as the certificate to said document purports. I subscribed and swore to said document before him as such assistant provost marshal, and he certified and subscribed said certificate in my presence at the date purported by said certificate.

Int 12. State whether after the retreat of General Banks from Alexandria you were arrested; and if so, by whom and for what cause, and where are you now staying, and why you are absent from your former place of residence.

Ans. I was arrested by order of General Taylor, for taking this amnesty oath which I have just been shown and testified about, and for attending the election and voting for delegates to attend the convention ordered to be called by Governor Hahn, and was put into imprisonment thirty days. This was after General Banks retreated from Alexandria. I am now making my

home at St. Clair County, Illinois. I stay with my brother, and have kept away from my former residence because I durst not go back there.

99 *Exhibit referred to in deposition of Cornelius Voorhies, A.—Oath of allegiance.—(See President's proclamation of December 8th, 1863.)*

I do solemnly swear, in the presence of Almighty God, that I will henceforth faithfully support, protect, and defend the constitution of the United States and the union of the States thereunder, and that I will, in like manner, abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified, or held void by Congress, or by decision of the Supreme Court; and that I will, in like manner, abide by and faithfully support all proclamations of the President made during the existing rebellion, having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court. So help me God.

CORNELIUS VOORHIES.

Sworn to and subscribed before me, at my office in Alexandria, La., this 24th day of March, A. D. 1864.

VICTOR WOLF,
Capt. 8th Reg't Wis. Vol. Inf'y, Ass't Provost Marshal.

100 *Description.*

Residence, parish of Avoyelles, La.; age, forty-five years; height, six feet; hair, black; eyes, blue; complexion, fair; occupation, planter; nativity, Kentucky.

Elizabeth Alexander.—Oath of allegiance.—(See President's proclamation of December 8th, 1863.)

I do solemnly swear, in the presence of Almighty God, that I will henceforth faithfully support, protect, and defend the constitution of the United States and the union of the States thereunder, and that I will, in like manner, abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified, or held void by Congress, or by decision of the Supreme Court, and that I will, in like manner, abide by and faithfully support all proclamations of the President made during the existing rebellion, having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court. So help me God.

E. ALEXANDER.

101 Sworn to and subscribed before me, at my office in Alexandria, La., this 19th day of April, A. D. 1864.

M. BENEDICT, *Lt., Dep'y Pro. M.*

Description.

Residence, Avoyelles Parish; age, 60 years; height, five feet 7 inches; hair, grey; eyes, grey; complexion, fair; occupation, ——; nativity, Louisiana; peculiarities, ——.

UNITED STATES OF AMERICA,
Southern district of Illinois, ss:

William M. Springer, being duly sworn, deposes and says that the signature of M. Benedict, lt. and dept. provost marshal, annexed to the foregoing oath of allegiance, and before whom the same was taken and sworn, is gen-

uine, to the best of his knowledge and belief, he having frequently seen the said Benedict sign his name, and that at the date of said oath the said Benedict was acting as deputy provost marshal at Alexandria, Louisiana.

WM. M. SPRINGER.

Subscribed and sworn to before me this 9th day of December, A. D. 1864.

GEO. P BOWEN, [L. S.]

Clerk U. S. dist. court, southern district of Illinois.

102 UNITED STATES OF AMERICA,
Southern district of Illinois, ss:

I, George P. Bowen, clerk of the district court of the United States for said southern district of Illinois, do hereby certify that the foregoing is a full, true, and complete transcript of the record and proceedings had in said court in a certain cause lately pending in said court, in prize, wherein the United States are libellants, and six hundred and fifty bales of cotton, one hundred coils of rope, sixteen bales, eight rolls, and one hundred and sixty pieces of bagging, and twenty-nine pieces of leather, seven hundred eighty-eight bales and fifty-two sacks of cotton, four hundred nine bales and one hundred and thirty-nine sacks of cotton, and one thousand bales of cotton, is defendant, so far as the same relates to seventy-two bales of said cotton claimed by Elizabeth Alexander, as the same are now on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Springfield, in said district, this tenth day of December, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

[SEAL.]

GEO. P. BOWEN, *Clerk.*

Filed January 3, 1865.

[REC. CCCLX, D. T. 1864.]—6

2219

Supreme Court of the United States.

No. 360.

UNITED STATES, APPELLANTS,

vs.

SEVENTY-TWO BALES OF COTTON,

ELIZABETH ALEXANDER, CLAIMANT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

ARGUMENT OF WM. M. SPRINGER FOR CLAIMANT.

McGill & Witherow, Printers & Stereotypers, Washington, D.C.

2221

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SEVENTY-TWO BALES OF COTTON,
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ARGUMENT OF WM. M. SPRINGER FOR CLAIMANT.

The following discussion with reference to some of the points involved in this case, with references, has been prepared, as a supplement to the argument of Mr. Corwine already submitted, and I most respectfully ask that it may be considered along with it.

The facts in this case appear at length in the printed record, and are further succinctly stated in the brief heretofore submitted.

I.—LAND CAPTURES.

The most important question involved in this case is doubtless this: Whether private property on land is liable to capture as a prize of war; or in other words, whether private property on land being within a portion of the territory of the so-called Confederate States, while occupied by the military forces of the United States, is liable to capture by persons belonging to the navy of the United States, and to condemnation as lawful prize of war, without regard to the personal status of the owner.

The district courts of the United States, sitting as prize courts, obtain their jurisdiction from and are governed by the laws of nations, unless restricted by municipal laws; and hence we are led to inquire what has been the law and usage of nations in reference to captures upon land. But few cases have occurred

in the courts of civilized nations, involving this question directly. The earliest decisions in prize cases were not reported, and hence the world is in comparative ignorance of the character of those decisions. But whatever may have been their purport on this question of prize jurisdiction, yet the modern decisions, being founded upon the enlarged views of Christianity and humanity, are a sufficient light for our guidance.

What is the meaning of the words "prize" and "prize goods" as used in maritime warfare? Bouvier's Law Dictionary thus defines the former word: "The apprehension and detention *at sea* of a ship or other vessel, by authority of a belligerent power, either with the design of appropriating it, with the goods and effects it contains, or with that of becoming master of the whole or part of its cargo. 1 Rob. Adm. R. 228. The vessel or goods thus taken are called a prize. Goods taken on land, from a public enemy are called booty, (q. v.) and the distinction between prize and booty consists in this, that the former is taken at sea, and the latter on land." A prize court is thus defined by the same authority: "the name of a court which has jurisdiction of all captures made in war, *on the high seas*." What are we to understand by the words "on the high seas?" This term which is frequently used in the laws of the United States, signifies the unenclosed waters of the ocean, and also those waters on the sea coast, which are without the boundaries of low water mark. 1 Boudier's Law Dic. 585; 1 Gall. R, 624; 5 Mason's Rep. 290; 1 Black. Com. 110; 1 Kent's Com. 403.

Sir W. Scott, in delivering the opinion of the court in the case of the Two Friends, in the High Court of Admiralty, in England, in the year 1799, said:

"I know of no other definition of prize goods than that they are goods taken on the high seas, *jure belli*, out of the hands of the enemy; and there is no axiom more clear than that such goods when they come on shore, may be followed by the process of this court. In such case the common law courts hold that they have no jurisdiction and are even anxious to disclaim it. The case of the Ooster Eems, which has been alluded to, was very different from this. In that case there was a material distinction as to the origin of the subject matter; for it was there expressly said, by the great person who then presided, 'that those goods had never been taken on the high seas; they had only passed in the way of civil bailment, on delivery into civil hands, and were afterwards arrested on shore as prize; it was held there was no act of capture on the high seas, and therefore that they were not to be considered as prize.'" 1 Rob. Rep., 284.

The Ooster Eems was the case of a ship stranded on the God-

win sands, on a voyage from Texel to the East Indies. The cargo was sent on shore, and amongst the rest, some boxes of silver were deposited with the Prussian Consul. The Warden of the Cinque Ports claimed the cargo as the property of enemies, having become a perquisite of admiralty within that jurisdiction. The master obtained a monition from the High Court of Admiralty to arrest the goods, and remove the cause from the Cinque Ports to the prize court, where he gave a claim for the cargo, as Prussian property. The cargo was condemned, but on appeal, that sentence was reversed, and the Lords pronounced "that the High Court of Admiralty had not a jurisdiction over the goods seized and proceeded against." Lords, July 14, 1784. Present, Lord Thurlow, Lord High Chancellor of Great Britain; Earl Gower, Lord President of the Council; Marquis of Caermarthen; Sir Lloyd Kenyon, Master of the Rolls.

This case of the Ooster Eems is quoted as authoritative by all modern text writers since it was delivered, and is frequently referred to in subsequent judicial decisions. We regret that no report of the case as heard before the House of Lords has come under our observation; but notwithstanding this the doctrine enunciated in it is clear and unmistakeable. In his Commentaries, Kent thus (page 392, vol. 1) refers to this case, while considering the subject of the jurisdiction of prize courts: "In the case of the Ooster Eems, cited by Sir William Scott, in the case of the Two Friends, (1 Rob. R., 271,) and decided by the highest authority, that of the Lords Commissioners of Appeal in 1784, it was held, that goods taken on shore as prize, where there had been no act of capture on the high seas, were not to be considered as prize, and that the prize courts had no jurisdiction in such a case."

The principle here laid down has been the settled law of this country and of Great Britain since 1784, and the reason that this court has never decided a case directly involving this question, is accounted for from the fact that no body in this country, until this case arose, ever pretended to claim that private property on land could be the subject of naval prize.

If private property found on land were liable to capture and condemnation as prize of war, then land forces would have an equal right to make such captures for their own benefit. The mere fact that the force operating has naval commissions cannot change the status of the property in question. The property itself must be in such a predicament as makes it liable to capture as prize of war. Personal property, in order to become liable to capture as lawful prize of war, must be found upon the high seas. And if the property captured should be upon the high seas, and the force making the capture should operate upon land, although

they held naval commissions, yet this would not be such a capture as would entitle the captors to prize money. The decision in the case of the Rebeckah (1 C. Rob., 235) is directly in point on this subject. Sir W. Scott, in delivering the opinion of the court in that case, said:

"The claim, therefore, of the admiralty must be supported, if at all, upon the other ground, namely, that this was a capture made from the land, and by a land force, and therefore not a maritime capture, by persons commissioned to take for their own benefit; and I think it is proved that the striking of the colors was compelled by a firing from the shore, and that a boat was sent from thence to take possession. Now, upon this subject, I entirely accede to what has been laid down, that a capture at sea, made by a force upon the land, (which is a case certainly possible, though not frequent,) is considered, generally, as a non-commissioned capture, and enures to the benefit of the Lord High Admiral. Thus, if a ship of the enemy was compelled to strike by a firing from the castle of Dover, or other garrisoned fortress upon the land, that ship would be a droit of admiralty, and the garrison must be content to take a reward from the bounty of the admiralty, and not a prize interest under the King's proclamation. All title to sea prize must be derived from commissions under the admiralty, which is the great fountain of maritime authority; and a military force upon the land is not invested with any commission so derived, impressing upon them a maritime character, and authorizing them to take upon that element for their own benefit. I likewise think cases may occur in which naval persons, having a real authority to take upon the sea for their own advantage, might yet entitle the admiralty, and not themselves, by a capture made upon the sea by the use of a force stationed upon the land. Suppose the crew, or part of the crew of a man-of-war were landed, and descried a ship of the enemy at sea, and that they took possession of a battery or fort upon the shore, such as may be met with in many parts of the coast, and, by means of such battery or fort, compelled such a ship to strike; I have no doubt that such a capture, though made by persons having naval commissions, yet being made by means of a force upon the land, which they employed accidentally, and without any right under other commissions, would be a droit of admiralty, and nothing more; and, therefore, I do not think it quite enough to say that the persons here were naval commissioned persons, and, consequently, entitled to the benefit of all property taken upon the sea. But I think that the peculiar nature and quality of the place, where the capture was effected, is to be added to the consideration."

That prize captures on land are not authorized by the laws of nations is evident from the fact that nowhere such captures are

authorized or approved by modern writers on international law. In the year 1794, Sir William Scott and Sir J. Nichols wrote an answer to a letter of inquiry on the subject of the jurisprudence and procedure of the tribunals of maritime international law from the American minister, Mr. Jay, which answer contained an outline of the principles and practice of these courts. The courts of this country have seldom, if ever, departed from the rules contained in it.

In this letter the learned English jurists say:

"When two powers are at war, they have a right to make prizes of the ships, goods, and effects of each other *upon the high seas*. Whatever is the property of the enemy may be acquired by capture *at sea;* but the property of a friend cannot be taken, provided he observes his neutrality.

"Hence the law of nations has established:

"'That the goods of an enemy, on board the ship of a friend, may be taken:

"'That the lawful goods of a friend, on board the ship of an enemy, ought to be restored:

"'That contraband goods going to the enemy, though the property of a friend, may be taken as prize; because supplying the enemy with what enables him better to carry on the war, is a departure from neutrality.

"'By the maritime law of nations, universally and immemorially received, there is an established method of determination whether the capture be, or be not, lawful prize.

* * * "'The evidence to acquit or condemn, with or without costs or damages, must, in the first instance, come merely from the ship taken, viz., the papers on board, and the examination on oath of the master and other principal officers, &c. * * *

"'If there do not appear ground *from thence* to condemn, as enemy's property or contraband goods going to the enemy, *there must be an acquittal*, unless, *from the aforesaid evidence*, the property shall appear so doubtful that it is reasonable to go into further proof thereof.'"

The letter from which the above quotations are taken lays down fully the principles governing prize captures. Nowhere in it do we see any provision made or referred to by which captures on land are to be disposed of as prize. No other property is referred to as liable to capture, except "ships, goods, and effects *upon the high seas*." And the evidence to condemn must be taken from the ship's papers, and the deposition of the master, &c. If from thence there do not appear ground to condemn as enemy's property, there must be an acquittal, unless "from the aforesaid evidence," there shall appear doubt as to the character of the pro-

perty. In the present case, where is the evidence upon which this cotton must, *in the first instance*, be condemned? There is no such evidence, nor can there be, the property having been taken on land, and never having been water-borne. Such evidence, then, not being in existence, how can *it* so obscure the subject that "the property shall appear so doubtful that it is reasonable to go into *further* proof thereof." As that proof cannot be obtained, which is a condition precedent to the taking of "*further proof*," it follows that such "further proof" is inadmissible. How, then, can the pretended captors in this case produce any legal evidence to condemn this property?

II.—Immunity of Private Ppoperty.

The immunity of private property on land from capture or confiscation is so well established as a principle of international law, that it is almost a waste of time to cite authorities on this point. But we will venture to quote a few standard law writers on this subject, at the risk of being tedious.

Phillimore (Int. Law, p. 500) says:

"It is a very general modern international usage to consider that movables *on land* of individuals, who have taken no part in the war, are exempt from hostilities and from consequent capture or confiscation."

"There is a marked difference," says a distinguished American law-writer, "in the right of war, carried on by land and at sea. The object of a maritime war is the destruction of the enemy's commerce and navigation, in order to weaken and destroy the foundations of his naval power. The capture or destruction of private property is essential to that end, and it is allowed in maritime wars by the law and practice of nations. But there are great limitations imposed upon the operations of war by land, though depredations upon private property, and despoiling and plundering the enemy's territory are too prevalent, especially where the war is assisted by irregulars. Such conduct has been condemned in all ages by the wise and virtuous, and it is usually severely punished by those commanders of disciplined troops who have studied war as a science, and are animated by a sense of duty or love of fame. * * * The general usage now is, not to touch private property upon land, without making compensation, unless in special cases, dictated by the necessary operations of war, or when captured in places carried by storm, and which repelled all the overtures for a capitulation." (Kent, vol. 1, p. 100 and seq.

The same doctrine was affirmed by the Supreme Court of the

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United States in the case of Mitchell vs. Harmony, 13 Howard's Reports, p. 115. In this case the learned Judge, in delivering the opinion of the Court, said: "Where the owner (of property) has done nothing to forfeit his rights, every public officer is bound to respect them, whether he finds the property in a foreign or hostile country, or in his own.

"There are, without doubt, occasions in which private property may lawfully be taken possession of or destroyed, to prevent it from falling into the hands of the public enemy; and also where a military officer, charged with a particular duty, may impress private property into the public service or take it for public use. Unquestionably, in such cases, the Government is bound to make full compensation to the owner, but the officer is not a trespasser.

"But we are clearly of opinion, that in all these cases the danger must be immediate and impending, or the necessity urgent for the public service, such as will not admit of delay, and where the action of the civil authority would be too late in providing the means which the occasion calls for." (13 Howard, 134.)

The officer taking private property, in order to justify the seizure, "must show by proof the nature and character of the emergency." (13 Howard, 135.)

There has been no evidence introduced by the captors in this case to show that there was a military necessity for the seizure of this cotton. Indeed, they do not claim that there was a military necessity therefor, but allege that it was taken as lawful prize of war.

The exemption of private property on land from capture or confiscation is unequivocally maintained and approved by General Halleck in his recent work on International Law. That distinguished General lays down the broad proposition that "Private property on land is now, as a general rule of war, exempt from seizure or confiscation; and this general exemption extends even to cases of absolute and unqualified conquest," *et seq.* Halleck Int. Law, p. 456. (See, further, Puffendorf de Jure, Nat. et Gens, lib 8, ch. 6, sec. 20; Heffter, Droit Internacional, sec. 133; Isambert, Annals Pol. et Dip. Int., p. 115; Wheaton, Elm. Int. Law, pt. 4, ch. 2, sec. 5; Kent on Am. Law, vol. 1, pp. 91–93; Vattel, Droit des Gens, liv. 3, ch. 9, sec. 13; and other authorities cited by Halleck, Int. Law, p. 457.)

There are exceptions to this rule, it is true. These exceptions may be stated under three general heads: 1st. Confiscations, or seizures by way of penalty for military offences; 2d. Forced contributions for the support of the invading armies, or as an indemnity for the expenses of maintaining order, and affording protection to the conquered inhabitants; and, 3d. Property taken on the field of battle, or in storming a fortress or town. (Hal-

leck, Int. Law, p. 457; Kent Com. on Am. Law, vol. 1, p. 92; Vattel, Droit des Gens, liv. 2, ch. 8, secs. 147, 165; Polson, Law of Nations, sec. 6; Mortens, Precis. du Droit des Gens, secs. 279, 280; Manning, Law of Nations, p. 136; Bello, Derecho Internacional, pt. 2, cap. 4, secs. 3, 4; Heffter, Droit International, sec. 131; Hautefeuille, des Nations Neutres, tit. 7, ch. 1.)

The property of claimants in this case does not fall within any of the exceptions to the exemption of private property on land from seizure.

III.—Jurisdiction of Prize Courts.

While no case in prize, exactly similar to the one now under consideration, has been decided by the Supreme Court, yet a case in admiralty, in some respects similar to this, has been decided. We refer to the case of the Sarah, the cargo of which ship was seized in a warehouse in New Orleans, for a violation of the revenue laws. In this case the libel charged that the property was seized "on waters navigable to the sea by vessels of ten tons burthen and upwards," while the proof showed that the property was seized on land. The libel in the case now pending, in which Mrs. Elizabeth Alexander is claimant for seventy-two bales of cotton, is similar in this respect. The libel charges the seizure to have been made on waters navigable to the sea by vessels of ten tons burthen and upwards, while the proof shows that the cotton was seized on shore.

In the case of the Sarah, (8 Wheaton, 294,) Chief Justice Marshall, in delivering the opinion of the court, said:

"By the act constituting the judicial system of the United States, the District Courts are courts both of common law and admiralty jurisdiction. In the trials of all seizures on land, the court sits as a court of common law. In cases of seizures made on waters navigable by vessels of ten tons burthen and upwards, the court sets as a court of admiralty. In all cases at common law, the trial must be by jury. In cases of admiralty and maritime jurisdiction, it has been settled in the cases of the Vengeance, (reported in 3 Dallas' Reports, 297); the Sally, (in 2 Cranch's Rep. 406); and the Belsy and Charlotte, (in 4 Cranch's Rep. 443,) that the trial is to be by the court.

"Although the two jurisdictions are vested in the same tribunal, they are as distinct from each other as if they were vested in different tribunals, and can no more be blended than a court of chancery with a court of common law.

"The court for the Louisiana District was sitting as a court

of admiralty; and when it was shown that the seizure was made on land, its jurisdiction ceased. The libel ought to have been dismissed, or amended, by charging that the seizure was made on land.

"The direction of a jury, in a case where the libel charged a seizure on water, was irregular; and any proceeding of the court as a court of admiralty, after the fact that the seizure was made on land appeared, would have been a proceeding without jurisdiction."

The syllabus in this case says:

"In case of seizures made on land under the revenue laws, the district court proceeds as a court of common law, according to the course of the Exchequer on information *in rem*, and the trial of issues of fact is to be by jury, but in cases of seizures on waters navigable from the sea by vessels of ten or more tons burthen, it proceeds as an instance court of admiralty by libel, and the trial is to be by the court.

A libel charging the seizure to have been made *on water*, when in fact it was made *on land*, will not support a verdict and judgment on sentence thereon, but must be amended or dismissed. The two jurisdictions and the proceedings under these are to be kept entirely distinct.

By reference to the copy of the libel in the printed record, I see that the District Attorney, (having obtained permission of the court below to amend his libel,) has inserted after the words "on waters navigable to the sea," &c., the words "or on lands adjacent thereto." We submit that this is mixing up matters that should be kept "entirely distinct." The libel is too general. The property was either seized on land or it was captured on water. It must be one thing or the other. It cannot be both. It is a very material allegation in prize as to where the property was seized. If the seizure were made upon land, a jurisdiction applicable to land seizures must be invoked. If upon water, or upon the high seas, the case falls under a very different jurisdiction. And as the court held, in the case last referred to, "the two jurisdictions and the proceedings under them are to be kept entirely distinct."

And further—

If, as was decided in the case of the Sarah, the jurisdiction of a court, sitting in admiralty, ceased, when it was shown that the seizure was made on land, how then can a court sitting as a prize court exercise jurisdiction where there is no admiralty jurisdiction? Admiralty is the genus, and prize is only the species. The jurisdiction of the former includes the jurisdiction of the latter. If the seizure is made in a place that precludes the juris-

diction of an admiralty court, prize jurisdiction is also precluded. That the courts of this country have denied all admiralty jurisdiction in cases of seizures made upon land, is a fact so plain that the most casual reader of admiralty decisions will not fail to have discovered. In the case of the Amy Warwick, in the district court of Massachusetts, Judge Sprague distinctly affirmed this principle in his opinion. The learned judge, in delivering the opinion of the court in that case, said:

"Another objection to those decisions of the district courts is founded upon the apprehension that they may lead to or countenance cruel and impolitic confiscations of private property found on land. This apprehension is unfounded. No such consequences can legitimately follow. Those decisions undoubtedly assert that the United States have the rights of a belligerent. But the extent of those rights on land, or the manner in which they are to be exercised, was not discussed. They were not specially mentioned, except to say that enemy's property found by a belligerent on land, within his own country, on the breaking out of a war, will not be condemned by the courts, although it would be if found at sea. This distinction, so far as it goes, tends to show that *the doctrine of maritime captures is not to be applied to seizures on land.*" Law Reporter, June, 1862, page 498, *et seq.* Case of the Amy Warwick.

The doctrine here affirmed is distinctly laid down in the case of Brown *vs.* the United States, 8 Cranch, page 110, to which the court is referred.

IV.—Enemy's Property.

In the opinion of this court in the case of the Amy Warwick and other ships, the court said: "Whether property be liable to capture as 'enemy's property,' does not in any manner depend on the personal allegiance of the owner. It is the *illegal traffic* that stamps it as 'enemy's property.' The owner *pro hac vice* is an enemy."

If then as was here decided, it was the "illegal traffic" that subjected property to capture, what is the offence of which the claimant in this case is guilty, whose property was never waterborne, and never engaged in "illegal traffic?" "The owner *pro hac vice* is an enemy." What then constitutes the offence that makes Mrs. Alexander, who has never taken any part in the rebellion an enemy of the United States? She must have done something illegal, or have been engaged in an "illegal traffic," to constitute her an enemy. But no illegal act is alleged or can be proven against her.

V.—An Act of Fraud.

The fraudulent act of the captors in marking the cotton of the claimant in this case with the initials "C. S. A.," as is proven by the testimony of Cornelius Voorhees, (printed Record, p. 35,) must not be allowed to pass without especial notice. In cotton-growing districts each planter has a cotton mark or brand, which is as generally known there as are the brands of farmers upon their stock. The Government of the United States has its brand "U. S." which appears upon all its movable property, and which is for the purpose of proving its ownership. The so-called Confederate States of America have also a brand "C. S. A." which is stamped upon Government property. Cotton bearing this brand is universally regarded as the property of the rebel Government. The object of the captors in branding claimant's cotton with the letters "C. S. A." was to stamp it at once as the property of the rebel government. By this act of the captors, a palpable fraud was committed which not only effected the right of the claimant but may have worked great injustice to the Government by the establishment of a precedent so unjust and so unwise. For it is well known that when these acts of the captors became known to the rebels, a general order for the burning of cotton was issued, and that thousands of bales were burned that might otherwise have found their way legitimately to the markets of the world.

It was also a fraud, whether so intended or not, upon the Courts to which the property was sent for adjudication; for the captors, by their own fraudulent conduct, were manufacturing evidence upon which they might rely for a condemnation of the property as a lawful prize of war, and thereby to secure one-half of the proceeds for their own benefit. Even the breaking of the bulk, or the embezzlement of any part of the cargo of a captured vessel by the captors, is such an act of fraud as will forfeit their right to prize money. (Halleck Int. Law, p. 742.) Upon the general rules of maritime capture, prize courts will decree forfeiture of the rights of prize against the captors guilty of gross irregularity or fraud, or any criminal conduct. Although the capture may be good prize, if there should prove to be fraud or collusion on the part of the captors, they forfeit thereby their rights. *Vide* Halleck Int. Law, p. 742–3; 1 Wildman Int. Law, pp. 298, *et seq.;* I Kent Com., pp. 359, 360; the George, etc.; 1 Wheaton R., p. 408, and 2 Wheaton R., p. 278. In the case of the Anne, (3 Wheaton R., p. 448,) this Court distinctly recognized the principle that fraud will

forfeit all rights to which captors otherwise might have been entitled under their commissions. In view of their fraudulent proceedings, the captors have forfeited whatever rights of prize they may have had in this cotton; and the owner, Mrs. Alexander, upon whom the fraud was committed having fully established her claim, is entitled to a restitution of her property, or to the proceeds of its sale.

VI.—Distribution of Prize Money.

If land captures had been sanctioned or practiced by this Government, laws would have been passed providing for the distribution of prize money arising from such captures. But the laws of the United States in reference to prize distributions contain no provision for the distribution of prize money, except such as arises from "the proceeds of all ships and vessels, and the goods *taken on board of them*, which shall be adjudged good prize." Act of April 23, 1800, sec. 5.

There is no provision in the law for the distribution among the captors of the proceeds of property taken in the manner this property was taken. The captors can maintain no claim to share the proceeds of this property. If the property is confiscable, the Government alone can receive the benefit. There being no law then, allowing persons holding naval commissions a share as prize money in such seizures as the one in this case, such persons have no more right to claim or receive a part of the proceeds of this cotton, than have any other citizens of the United States.

VII.—A Question of Policy.

Since this decision in the case of the Ooster Eems in 1784, the uniform practice of all civilized nations while engaged in war, has been to regard private property found on land as not a subject of capture as prize of war. Since that time nearly all of the great powers of the earth have, at times, been engaged in war. There was a long and bloody war between England and the United States—the war of 1812—and a most prominent feature of this war was the operations of the navies of the respective belligerents. Many prize captures were made upon the high seas by each, but neither claimed the right, nor pretended to exercise the system of making naval prizes of property found on land. And so in all other modern wars in which civilized nations have been engaged. *Et uno disce omnes.* If this Court should now establish a different doctrine, it would operate most injuriously, so far as the United States are con-

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cerned. While other nations would not recognize such a doctrine as binding upon them, yet our Government would be forever estopped from denying the justice of such a rule, so far as we are concerned. Then suppose we should become involved in a war with Great Britain, its navy would be invited by the highest judicial tribunal in the country, to enter our lakes, harbors, bays, rivers, and creeks, wherever a gunboat could be floated or towed, send the ship's and boat's crews ashore, and bring in all the movable property in the land, and have it condemned as lawful prize of war. For, if the ship's crew can impress wagons and bring in property lying one mile from the river, they may go fifty or a hundred, or any number of miles, and everything thus seized would become prize of war, and the captors would be entitled to one-half of the value of all such captures. A greater incentive to indiscriminate plunder could not be conceived of. This Government could establish no precedent so dangerous to her peace, and the security of the property of her citizens, than to assert the right of naval forces to capture and condemn as prize of war, property found on land, or on the inland waters. If there were no principle involved, a wise national policy would certainly dictate that prize captures on land should not receive the judicial sanction of this Government. As a mere matter of policy, then, if there were no other reasons involved, this Court should never recognize a doctrine fraught with such dangerous consequences.

VIII.—Lindo vs. Rodney.

The principal case relied upon by the captors' counsel, as sustaining their claim for the condemnation of claimant's property as prize of war, seems to be the case of Lindo *vs.* Rodney.

It cannot be contended, upon a careful examination, that the case of Lindo *vs.* Rodney is at all similar to this. In that case Lord Mansfield stated the question at issue to be, "Whether such a capture ashore by a fleet of ships and the land and sea forces aboard, in consequence of a previous surrender of the place, is within the jurisdiction of the court of prize?" In this case the goods were taken on land *in consequence of a surrender to ships at sea*. The surrender took place on the 3d of February, 1781, and consisted of the island of St. Eustatius and all things thereon. The prey was killed at sea and taken on land. The capture of the goods on land was the immediate consequence of the surrender at discretion to a sea force. In that case it is said, in short, every reason which created a prize court as to things taken upon the high seas, holds equally when they are *thus* taken on land. The force

which terrified the place into a surrender was at sea. If they had resisted, the force to subdue would have been from the sea. For full history of this case, see Brown's Cases in Parliament, p. 425–30.

The goods condemned in this case were not condemned as naval prize, as we now understand the term. The libel prayed "that all the goods, wares, and merchandises, seized and taken by the said Sir George Bridges and John Vaughan, and the fleet and army under their command, upon the said surrender of the said island, might be pronounced to belong, at the time of the capture and seizure of the same, to the enemies of the Crown of Great Britain, and as goods of such enemies or otherwise subject and liable to *confiscation*, and to be adjudged as and for goods and lawful prize to our said lord, the King."

The captors did not receive prize money in the case. The goods were confiscated in the name and for the King.

In this case Lloyd Kenyon was counsel for the plaintiffs. In his argument, which is entitled to the greatest consideration, he said:

"And although there have been, for a series of years past, many instances in the admiralty of condemnation of spoils taken at land, yet they will be found to have passed *sub silentio* and never to have involved in them any question between the subjects of Great Britain amongst themselves as to the legality or right of such captures, and it was submitted that such instances were by no means of sufficient weight to establish a rule so repugnant to the principles of the Constitution and so dangerous to the liberties and properties of the subjects, as that any subject or subjects of this country intrusted with the command of a fleet or an army, may, in his Majesty's name, seize the properties of his subjects, in his islands or territories beyond the seas or belonging to neutral States, as prize."

This case, or Mitchell *vs.* Rodney, *et al.*, similar in all respects, was tried, on appeal, in Parliament, November 24, 1783.

IX.—Conclusions.

From the authorities above cited the following propositions are clearly deducible:

1st. That private property on land is not liable to capture and condemnation as lawful prize of war.

2d. That private property on land is now, as a general rule of war, exempt from seizure or confiscation.

The facts proven in this case have clearly established—

3d. That the property of the claimant, Mrs. Alexander, does not fall within any of the exceptions to the general rule laid down in the second proposition.

While it is admitted that the District Courts of the United States, sitting as courts of admiralty, have the right to try the question of prize or no prize, yet when it appears from the facts proven and from the law which should govern in the premises, that the property seized was not a legitimate subject of prize, then it is the duty of the court to pronounce against the claim of the captors, and award restitution to the claimants.

The other questions involved in this case have been so fully stated in the argument heretofore submitted, that it is unnecessary to reiterate them.

X.—Points suggested by Associate Counsel.

Messrs. B. S. Edwards and M. Hay, associate proctors for the claimant in the district court, have requested me to make the following points and references for them, to which the attention of the Court is respectfully directed:

First. By the modern law of nations the private property of an enemy upon land is not confiscable, nor can it be made the subject of prize or booty, excepting under qualified circumstances, which are not shown to have existed in this case. 1 Kent's Com., 91; Lawrence's Wheaton, 596; Halleck's Laws of War, 456; Argument of Mr. Dana in prize cases, 2d Black., 653; and Phillimore in his work on International Law, (vol. 3, page 333, Law Library edition.) declares the right of naval capture to extend only to property belonging to the enemy found afloat upon the high seas, and to all property so afloat of subjects or neutrals conducting themselves as belligerents. To the same effect is the decision of the court in the prize case, 2d Black. It is claimed by the captors' counsel that the old rule of international law went further, and justified confiscation and seizure of the property of an enemy wherever found, upon sea or land. It is also claimed that the case of Lindo *vs.* Rodney recognized this old rule in all its severity. The ruling in that case was supported by and had its origin in the express provision of the British prize acts then in force. But whatever may have been the effect of the ruling in that case, the later and more authoritative case of the Ooster Eems contained an unequivocal and positive judicial recognition of the modern rule, exempting property upon land from capture as naval prizes. The case of Brown *vs.* the United States (8 Cranch, 110) recognized the existence of the old *abstract right* of general confiscation, but decides against the assertion or application of that right as contrary to modern usage, unless authorized by an act of Congress. The principle to be deduced from that case clearly is, that whatever may have been justified under the

old rules of the *jure belli*, as to the right of a belligerent to confiscate generally, yet the court would not, without an express act of Congress, carry or apply this abstract right further than modern usage warranted. The case before the Court was a seizure of property upon land within our own territory. Modern usage did not justify it, and the Supreme Court has held that such seizures are unwarranted. Do not the authorities equally well establish that under modern usage private property upon land in an enemy's territory is equally protected? So far from Congress having expressed any authority for the seizure in this case, the expression is directly contrary. See the various confiscation acts, (cited in the argument heretofore submitted.) These acts are aimed only at disloyal persons and practices. The policy of the Government is to protect and encourage the loyal inhabitants of rebel territory.

Again, the principal contended for that hostile residents makes hostile property, finds no application to the facts shown in this record. Admitting that the territory was rebel territory, that the residence of the claimant was up to the time of the occupation by General Banks, a hostile residence; yet, when the purpose of the adverse occupation by General Banks is shown, (as it was for the purpose of driving out the hostile army; of restoring the inhabitants to their allegiance and vindicating the federal authority over them); and when, in pursuance of this purpose, we find by the record these inhabitants were invited or induced by him to initiate proceedings for civil government, by ordering an election for civil rulers, from the very moment that his occupation was taken or announced with this object, the rule was changed in regard to hostile territory. It became territory under federal rules and protection. The promise of protection and civil rights to the inhabitants could not exist with the assertion of belligerent rights against them at the same time.

SECOND. The rights to all captures vests primarily in the sovereign, and no individual can have any interest in a prize, whether made by a public or private armed vessel, except what he receives under the grant of the State. This is a general principle of public jurisprudence, and the distribution of the proceeds of prizes depends upon the regulations of each State; (Halleck Int. L., p. 727); and unless the local laws have otherwise provided the prize vests in the sovereign. [1 Kent, 101.] Until condemnation no title whatever vests in the captors, and the right of the Government to provide or direct a release of the property seized as prize before adjudication and against the will of the captors, is not taken away by any grant of prize. (The Elseby, 5 C. Rob., 173, and cases there cited.)

The act for the government of the navy, passed in 1800, would

measure the captors' rights under this service. That act, however, only made a grant of prize to the navy of ships and the goods taken in them; consequently in no event, could the captors have any interest in this seizure. If there is a condemnation, it must be to the Government. (Story's opinion in Brown *vs.* United States, 8 Cranch, 110.) But even if the captors could have an interest, after condemnation under the authorities above cited, it was perfectly in the power of the Government to relieve or otherwise provide in regard to it. This has been effectually done by the Government, so far as this capture is concerned, in two ways. First, by the amnesty proclamation and the oath taken by the claimant under that proclamation. Second, by the act of July 2, 1864, in regard to seizures on the inland water of the United States. This act clearly applies to pending as well as to future seizure. The Government, under the authority of the cases before cited, was alone interested in these seizures. The captors had no interest in them under the prize acts, and even if they had it was competent for the Government to provide otherwise, and no reason can be shown or assigned why this act of Congress is not operative on the case.

To these authorities, may be added two opinions of Judge Trigg, of the United States district court for Tennessee. One was delivered in the well-known case against the *Republican Banner* office, in which it became necessary to construe the act of 6th of August, 1861, and in so far as the meaning of the words "prize and capture" as used in that act is involved, and what that able judge says of the law of prize as understood in our courts and those of England, we refer to it. Judge Trigg says: "The ordinary prize jurisdiction of the admiralty extends to all captures in war made on the *high seas*." "I know of no other definition of prize goods," said Sir William Scott, in the case of the Two Friends, "than that they are goods taken on the *high seas*, *jure belli*, out of the hands of the enemy." 1 Rob., 271. Then, according to this definition, to constitute goods or property *prize* under the ordinary legal acceptation of the term, they must be taken or captured on the *high seas*, must be so taken *jure belli*, and must be taken out of the hands of the enemy. In fact it has been held that goods taken on shore, as prize, where there has been no act of capture on the high seas, were not to be considered as *prize*, and that the prize courts had no jurisdiction in such a case. That Judge further holds that to make a capture of prize war valid, it must be made on the *high seas*, and during war. His opinion is expressly concurred in and adopted by Justice Catron. See Nashville *Daily Union*, Nov. 6, 1863.

The other case was a libel against sixty-nine bales of cotton,

wherein the court hold "that there is no condition in which any portion of the people of the United States may be placed, by any act of their own, hostile to the Government, which could render the laws less obligatory upon them, or relieve them, as citizens, from their duty of obedience to these laws."

See this opinion in the Nashville *Times*, July 7, 1864.

In view of the facts in this case, and the international and statutory law which should govern in the premises, I respectfully submit that the judgment of the district court should be affirmed.

WM. M. SPRINGER,
Of Counsel for Claimant.

APPENDIX.

Since the preparation of this brief and that of Mr. Corwine, and several days after his went to press, we found on file the brief of the Attorney General and the counsel for the captors, the same having been filed Monday, February 20. To that brief are appended copies of certain reports or letters from Rear-Admiral Porter to the Secretary of the Navy of the operation of the fleet in Red river, and other waters of the Southwest. Although we have made application to the Secretary of the Navy for copies of all papers and orders relating to this expedition and the agency of that expedition in reference to cotton seizures, &c., they were denied to us. And we do now know that those appended to that brief do not cover all which relate to that subject. For we now annex hereto three letters written by that Rear-Admiral, copies of two of which we have been enabled to secure through the French Legation resident in Washington city, which we respectfully ask may be taken, and considered along with those appended to opposing counsel's brief. We do not know how many more are in possession of the Navy Department. The other letter, a copy of which is appended, was addressed to Judge Treat, of the United States District Court for the southern district of Illinois.

Letter of Rear-Admiral Porter to Judge Treat.

MISSISSIPPI SQUADRON, FLAG SHIP BLACK HAWK,
OFF ALEXANDRIA, LA., *March* 24, 1864.

SIR: I have the honor to report for adjudication and condemnation two thousand one hundred and twenty-nine bales of cotton, 28 barrels molasses, and 18 bales of wool, captured from rebels, and belonging to Confederate government. This cotton, wool, and molasses was captured in presence of

the following vessels, which are all entitled to share in the prize. I would respectfully request that the cotton may be sold as soon as possible, as it is badly baled, and it may be accidentally burnt and lost to the Navy. I also request that previous to being sold it may be advertised in the Cairo papers. Vessels entitled to share: Black Hawk, Eastport, Lafayette, Neosho, Ozark, Choctaw, Osage, Chillicothe, Louisville, Carondelet, Benton, Pittsburg, Mound City, Essex, Lexington, Wachita, Fort Hindman, Cricket, Gazelle, and General Bragg.

Very respectfully, your obedient servant,

DAVID D. PORTER, *Rear-Admiral.*

Hon. S. H. TREAT,

United States District Judge, Springfield, Illinois.

Report of Rear-Admiral Porter to Secretary Welles.

MISSISSIPPI SQUADRON, FLAG-SHIP CRICKET,

OFF ALEXANDRIA, LA., *May* 11, 1864.

When I came into this river the rebels commenced burning cotton, as they always have done when our forces have appeared, and I ordered all cotton found lying along the banks of the river to be taken charge of, to be sent to Cairo for adjudication, when it was the property of the rebel Government or its officers, and to be receipted for when the property of private individuals. When private individuals (loyal) made objections to the cotton being taken, saying they had no fear of its being molested, it was not troubled, and was generally burned.

In all cases when persons came to me with claims, I either delivered the cotton to them or gave them receipts for it, instructing them how to get it in Cairo, without being put to the expense even of transportation. Applications were daily made to me to take possession of cotton, the parties being willing to abandon it to the navy, all of which applications I declined acceding to, not intending to have anything to do with matters of a private nature, and not having the means of transportation.

On my arrival here I found a store-house filled with "C. S. A." cotton, among which were three lots (formerly rebel cotton evidently) claimed by private individuals. When satisfied that they had paid for the cotton, I returned it to them or gave them the necessary document to enable them to get it. In all cases the fairest dealings have existed towards all persons, which every one here interested will acknowledge, and if some of those concerned may have to go to Cairo to secure their rights, they are well satisfied to have escaped from the indiscriminate seizure which was made by the army. I decided that I had a right to take all rebel Government cotton, or that of persons in arms against the Union, for this is truly an enemy's country in every sense of the word, and to have left the means of carrying on war in their hands would have been anything but patriotic.

I am, &c., DAVID D. PORTER, *Admiral.*

Hon. GIDEON WELLES,

Secretary of the Navy, Washington, D. C.

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Report of Rear-Admiral Porter to Secretary Welles.

MISSISSIPPI SQUADRON, FLAG SHIP BLACK HAWK, *May* 31, 1864.

At different times since I took command here 8,000 bales of cotton have been seized, taken from the bank, or found abandoned, or was the property of the so-called Confederate Government. In all cases of the kind such cotton has been sent so Cairo to Captain Pennock, who receipts for it, registers it in his office, subject to the inspection of any one, reports it with the accompanying papers to the district court, and when the Marshal receives it and receipts for it, our connection with the matter ceases. I think the course pursued by the navy is the only just and proper one, at least it is fair to presume that claimants are satisfied with it, as out of about 8,000 bales not one thousand has been condemned.

DAVID D. PORTER.

Hon. GIDEON WELLES,
Secretary of the Navy, Washington D. C.

Letter from Hon. Wm. H. Seward, Secretary of State, to Mr. L. de Geofroy, Ministre chargé d'áffairs de France.

DEPARTMENT OF STATE,
WASHINGTON, *August* 19, 1864.

SIR: I have the honor to recur to your note of the 13th of June last, which relates to the cotton claimed by Messrs. G. A. Le More and Company.

The inquiries which I have made on that subject have resulted in ascertaining the facts that the cotton found by the naval officers on the Ouachita river was taken by them with a view to saving it from destruction, for the benefit of lawful owners, when there were such, and for the Government when there were not such owners. The cotton was conveyed to Cairo and placed in the custody of the circuit court of the United States for the southern district of Illinois, and in the keeping of the Marshal at Cairo, where it yet remains. All persons who have shown to the Marshal just claims have received their cotton. When the claims shown appeared to be insufficient, the cases have been referred to the court for its decision, the cotton in the mean time remaining in the possession of the Marshal, who is an officer of this Government.

I learn from the District Attorney that the cotton which you mention as claimed by Messrs. Le More and Company, is now in the custody of the court, and only waiting for the legal owners to establish their claim to it, which, in the first instance, may be submitted to the Marshal at Cairo, and if the claims should be disallowed by him, then to be submitted to the United States Court. I have given notice of Messrs. Le More and Company's claim to the Marshal. But I think it proper that you should again advise them to

present their claim to the court in the legal and customary way, and to lose no time in doing so.

The President has no lawful authority in this case to withdraw the question of title from the judicial authority which I have named, nor is he able to perceive how any Executive Department of the Government, if it had authority to do so, could hope to arrive at a decision upon a conflicting claim more correctly or even more promptly than the court to whom the law refers the question. Certainly the Department over which I preside could not adjudicate upon *ex parte* testimony, and it has no authority to try the case judicially. Having now renewed the suggestion that the Messrs. Le More and Company take the customary measures to submit their claim to the Marshal and to the United States Court at Cairo, it remains for me to observe that this Government cannot acknowledge any liability in the case if Le More and Company decline or omit to assert their title before the legal tribunal whose authority is recognized not only by the laws of the United States, but by the law of nations.

I give you herewith a copy of two letters* of Rear-Admiral Porter which relate to the cotton captured in the expedition on the Red river and its tributaries, among which cotton I suppose that which is claimed by Messrs. G. A. Le More and Company is included. Accept, sir, &c.,

SEWARD.

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* The two letters given above, addressed to Secretary Welles, are those referred to.

Supreme Court of the United States.

DECEMBER TERM, 1864.

No. 360.

THE UNITED STATES, APPELLANTS,

against

SEVENTY-TWO BALES OF COTTON; ELIZABETH ALEXANDER, CLAIMANT.

Appeal from the District Court of the United States for the Southern District of Illinois.

ARGUMENT OF RICHARD M. CORWINE, ON BEHALF OF CLAIMANT.

McGILL & WITHEROW, Printers and Stereotypers, Washington, D. C.

NOTE.

When this brief was prepared, I had no opportunity of seeing any of Rear Admiral Porter's letters or reports to the Secretary of the Navy, such as are appended to the brief of the Attorney General and the counsel for the captors. Although repeatedly called for, the Navy Department refused to furnish to the counsel of the claimant any communication relating to cotton operations. I did not see the brief referred to until Monday, the 20th, some days after my brief was printed, so that my statement of the facts is made up from the Record and the position of the parties as disclosed by it. These letters, &c., of Rear Admiral Porter state some things with respect to the co-operation of the navy with the army, and the movements of the former, somewhat differently than his subordinate commanders, Lieutenants Ramsey and Foster, ~~did~~ do in their depositions set forth in the Record.

The same remarks may be made as to the copies of Rear Admiral Porter's two letters, and the one from Secretary Seward, set out in the appendix to Mr. Springer's brief. I had not the advantages of seeing any of them when I prepared my brief.

While I do not think those letters and reports of Rear Admiral Porter make it necessary to change the line of argument I have adopted, nevertheless I deem this explanation is due to the Court.

R. M. CORWINE.

WASHINGTON CITY, *February* 21, 1865.

Supreme Court of the United States.

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FACTS.

This libel was brought to condemn, as prize of war, 72 bales of cotton, the property, as is claimed, of Mrs. Elizabeth Alexander.

It was seized by some of the naval force in the Red River expedition, commanded by Major General N. P. Banks, the seizure occurring about the 27th day of March, 1864. The cotton was situated some distance back from Red river, a mile or more, and had to be hauled by teams to the river bank for shipment on the boats of the navy. The country above and below the plantation of the claimant, *when* the cotton was seized, was occupied by the army of the United States, and under the command of General A. J. Smith, 10 to 14 days before the capture of the cotton was made. Fort De Russey was captured on the 15th day of March, by those land forces, (see printed Record, p. 34,) and the naval fleet did not appear on Red river, so high up as the claimant's plantation, until as late as the 20th or 27th of March, 1864. (See printed Record, pp. 24 and 35.)

The enemy evacuated all that country, moving their forces up Red river, about 110 miles below Shreveport, before Gen. Smith appeare at Alexandria. After the capture of Fort De Russey, there was no rebel army, and no armed enemy, as low as Alexandria, until after the 15th of April. Our forces held undisputed possession of the whole country up to that time. During the time we were thus in posses-

sion, by order of Governor Hahn, of Louisiana, an election took place for delegates to a State Convention, which Convention was afterwards held and a new Constitution formed for that State. Coming after the army had driven the enemy from all that part of Louisiana and had taken possession of it, so that her loyal citizens could hold a civil election, at which they expressed their constitutional voice for delegates to a State Convention, the flotilla, commanded by Commodore Porter, which came there to assist General Banks in clearing out the rebel army, seized the cotton of the claimant, and now seeks to hold it as prize of war. It further appears that Mrs. Alexander never rendered any voluntary aid of any kind to the enemy, but uniformly refused to do so, and never wavered in her fidelity to the Government of the United States.

"The expedition up Red river was conducted by the naval service on the river, and by the army on the land, *both acting together.*" (Printed Record, p. 24.)

It further appears that the cotton in controversy was raised by the claimant, on her own plantation, where it was found by the captors; none was sold, or offered to be sold, to the rebels, but all efforts to induce her to sell to them were successfully resisted by Mrs. Alexander.

It appears further, after Gen. Banks's forces took possession of that country, the claimant took the oath of allegiance to our Government. (Printed Record, page 36.)

It further appears, from the common and publicly received history of the expedition and of the country, that Red river is a tributary of the Mississippi, which stream it empties into 334 miles above the mouth; that seafaring vessels do not and have not navigated it, the same not affording sufficient water for that purpose; that no other vessels than steamboats of light draft, engaged in the transportation of passengers and freight, navigate said river; that the gunboats, so called, used on that expedition, were of light draft, similar in many particulars to the steamboats aforesaid, many of them having been such steamboats, altered to carry guns and munitions of war generally, but have not been heretofore used, and cannot hereafter be used, at sea for any purpose whatever; that the guns were mounted on them in order that such guns might be used in connection with and subordinate to the army in its active operations against the enemy in the small streams of the West and Southwest, away from the sea-board, and such vessels were not intended for any other use.

POINTS.

1st. The navy cannot capture and hold as prize of war enemy property situate on land, such property never having been on the waters navigated by the vessels of the navy, and never having been afloat: but which was found and captured on the plantation, where it was raised, a mile or more from the river.

2d. There is no such thing as *prize of war* on the inland waters of the United States, where seafaring vessels or vessels of war never go—of property which has no connection, directly or indirectly, with captures made on the high seas or elsewhere.

3d. Gunboats, co-operating and constituting part of the land forces, directing their efforts against large and the same bodies of insurgents, on our territory, the whole going to make up the army of the United States, in its Red river expedition, do not possess any more rights and powers, and their officers and crews are not entitled to any more privileges or rewards, as to the property seized on the land or on those waters, than the officers and privates composing the land forces, as distinguished from the officers and crews of the said gunboats.

4th. The property of loyal citizens, situate and being in sections of country occupied and held by our troops, which citizens *at the time* acknowledged and obeyed the laws of the United States and the laws of the State of Louisiana, passed in pursuance thereof, and who were *then* exercising, as such citizens, constitutional civil rights, is not lawful prize of war, which might be rightfully seized by the naval force aforesaid, and subjected to the laws of prize, as applied to seizures made on the high seas, according to the laws of nations applicable to such cases.

5th. There can be no such thing lawfully as prize of war in property taken from loyal citizens in territory occupied and held by the civil and military authorities of the United States *at the time* such property is captured.

6th. Before the passage of the act of Congress, August 6, 1861, (special session, page 319,) the District Courts of the United States had no jurisdiction in cases of prize of war of property captured on land, on the lakes, or on the inland waters of the United States, unless it was expressly derived from the law of nations, and if there was such jurisdiction, then, after the passage of that act, it was expressly limited thereby to the classes of cases therein enumerated.

7th. Any act of capture, or other act, done by the naval forces, in contravention and in violation of the general plan of Major General Banks, for the conduct of that Red river campaign, or which were not sanctioned and approved by him, as the sole commander of that expedition, was null and void, and conferred no legal rights on the captors.

8th. It is no lawful capture for the naval forces to take forcible possession of cotton which had been previously wrested from the grasp of the enemy, by the sole agency of the land forces, and which was at that time within our lines, and within the influence and protection of such land forces, which forces then held exclusive possession of the country.

ARGUMENT.

I.

There can be no valid capture by the navy of enemy property on land.

1st. There is no decision of this court recognizing this doctrine. There are some decisions of other courts cited by commentators, which are claimed to go to this extent. But I submit, with great confidence, that none of them will support the claim. Judge Story, in an appendix to the 2d vol. of Wheaton, asserts the doctrine, and cites a few English cases and one American case. The latter is the decision of a District Court in Delaware, reported in 4th Dallas. The facts show that the vessel captured was lying *in* a navigable stream at the time of capture, and that that stream emptied directly into the sea. I do not suppose that much importance could be attached to that case, even if it went so far as is claimed, for the question was not fairly presented, and consequently did not form the staple of the learned Judge's consideration.

To support the general jurisdiction of the District Courts in admiralty and maritime cases, counsel will rely upon the following cases, viz:

The case of Jennings *vs.* Carson, 4 Cranch, 20, which simply decides that the District Court has admiralty and maritime jurisdiction, making no reference whatever to the jurisdiction in captures made on land.

The case in 9th Cranch, 359, brig Alerta *vs.* Silas Moran, does not touch the question of capture on land.

So, likewise, is the case of Penhollen *vs.* Doane's Adr., 3 Dall., 54.

So, also, of the case of the sloop Betsey, 3 Dall., 6.

So of the case of Talbot *vs.* Jansen, 3 Dall., 133.

So, likewise, of the case of the Amiable Nancy, 1 Paine's C. Rep., 111.

The question of the jurisdiction of that Court as to land captures did not arise, and is not referred to in any of these cases. But counsel will argue that the general jurisdiction in maritime and admiralty, which these cases decide as belonging to the District Court, draws after it the jurisdiction of land captures, because it has been recognized in the Prize Courts of England. To this claim I have to say, by way of repetition, that that Court derives that peculiar jurisdiction from municipal statutes, and all the cases cited by counsel, and those relied upon by the American writers, on the subject, proceed from and find their precedent in the leading cases of Lindo *vs.* Rodman, and Alexander *vs.* the Duke of Wellington, herein more particularly commented upon. To give the Court jurisdiction of captures on land, in any other case, it must appear that the property so captured belonged in some way to a capture made on the sea, as in the case of Lindo *vs.* Rodman.

2d. As to the English cases cited by Judge Story, it is enough to say that the case of Le Caux *vs.* Eden, (Douglass, 616,) is the leading one, and that finally went off on the proposition that the treaties, laws of England, and the orders of the Admiral, justified the seizure of the property on land. Lord Mansfield, who decided the case, in the note to that case put his decision on that ground; the facts of the case did not require him to go further. He also held that when property is once captured on the high seas, and it is unlawfully carried ashore, the captors may recapture it on the land. This is the extent of all the decisions cited to sustain Judge Story's note in Wheaton. Chancellor Kent, in his Commentaries, reiterates the same doctrine, and cites the same authorities in its support, and one other. A careful examination of the English cases has not enabled me to come to the conclusion that these learned judges are sustained in the text. Indeed, one of the cases cited, 1 Rob., 276 and 284, the Two Friends, and quotes with approbation the case from 1 Hay and Marriott, page 28, where the court refused to entertain jurisdiction of a case because the capture was made on land and not on the high seas.

The title deeds on which only the claims of captors can be be constituted, are the prize acts and the proclamation. The Melomarey, Colas, 5 C. Rob., 41. All claims to sea prize must be derived from commissions under the Admiralty, which is the great fountain of maritime authority. The Rebekah, 1 C. Rob., 235.

This case is of great importance, in view of the claim of the Navy to make land captures, and is earnestly commended, as showing that Sir William Scott made a clear distinction between land captures made in pursuance of the legitimate relation of the Navy to the place of capture, and such captures otherwise made.

"I will state," says Sir William Scott, in Edwards, 113, Thorshaven and its dependencies, upon one point, "which is, that the commissions of privateers do not extend to the captures of private property upon land; that is a right which is not granted even to the King's ships. The words of the third section of the prize act extend only to the cap-

ture by any of his Majesty's ships "of any fortress upon the land, or any arms, ammunition, stores of war, goods, merchandise, and treasure belonging to the State, or to any public trading company of the enemies of the Crown of Great Britain, *on the land.*" Ib., 113.

It is worthy of remark that Chancellor Kent (1 Kent's Commentaries, 357) cites Lindo *vs.* Rodney, Douglas, 613, and note, and Alexander *vs.* The Duke of Wellington, 2 Russ. and Mylne, 35, to sustain the text that lawful captures may be made on land by naval forces, &c., while both of those cases disclose the important fact that that jurisdiction is derived from municipal law. Lord Mansfield, as we have seen, cites and relies upon treaties, acts of Parliament, &c., to sustain this jurisdiction. The statutes are 17 Geo. II, C. 34, S. 2, and 29 Geo. II, C. 34, S. 2, in which power is given to the Lords of the Admiralty to grant commissions, &c., "for attacking or taking with such ship, or with the crew thereof, any place or fortress *upon the land,*" &c. Having cited them, Lord Mansfield says, (p. 619,) upon these authorities, there can be no doubt of the right to make land captures. And so in the case of 2 Russ. and Mylne, it appears that the proceedings sought to be reviewed were in pursuance to the statute 54 Geo. III, C. 86, S. 2, where land captures by the *army* are provided for, and prize money awarded the officers and men engaged in the capture as booty. But that learned Chancellor cites with approbation the cases of the Ooster Eems and the Two Friends, where doctrine of land captures is strongly condemned.

Whenever the courts of Great Britain exercise jurisdiction of captures made on land by the Navy or the Army, and that proceeds from a mere municipal regulation of that country, it shall not apply in countries where no similar regulation exists, but rather the general rule of the law of nations shall prevail. 2 Gallison, 39.

3d. No case has ever arisen in this country which has made it necessary to decide the question broadly. This court, in the case of Brown *vs.* United States, 8th Cranch, 1, disclaims the doctrine that captures, as prizes of war, could be made on land, without further legislation by Congress.

4th. Here the capture was made by men of the gunboats near Red river, but in order to get possession of the property, the captors had to go a mile or more into the country away from the river. The stream is a tributary of the Mississippi, into which it empties 334 miles above the mouth. Vessels of war never go into that stream, the water being too shallow. Now, if it is true that the navy may go one mile on land to make captures, in nowise connected with a capture at sea, they may go any number of miles for the same purpose. If captures thus made are valid as prize of war, then the officers and sailors become entitled to prize money for doing that which, had it been done by the army, would have entitled the latter to no pecuniary compensation. This is so manifestly unjust that it cannot be passed without some further inquiry. In the first place, what principle is it which allows prize money to the navy? It is that the captors are

exposed to unusual perils when making captures *on the high seas.* They imperil their ship and their lives, the hazard and risk being far greater than an engagement on land. It is somewhat akin to the principle which allows salvage for saving the ship and cargo. The reward is great, but not at all disproportioned to the service rendered. Thus, the rule of allowing prize money springs from the perils of the sea and the risk consequent upon a capture from an enemy ship. The same reason does not exist with respect to captures on land, or even on those small streams in the western and southwestern waters. The rule vanishes with the reason. It is manifestly unjust, and for that reason should be ignored. In the second place, it is to be observed that there was no resistance offered to these captors. There was no enemy, armed or unarmed, to oppose them in their search for the cotton in the interior, and none to hinder them from hauling it from its place of storage to the river bank.

5th. This cotton was not, previously to its seizure on the 27th of March, the subject-matter of prize, was in nowise connected with any other seizure, and the captors had no claim to it on any account, unless it sprung out of their clear right to make the capture on land as an independent act, having no connection with any other act of seizure. But we are not left without legislative aid in the examination of this point. Congress, on the 17th July, 1862, p. 607, long after the construction and use of armed steamboats in the western waters, which were engaged in *aiding* the army, expressed itself with respect to captures made by armed vessels in the service of the United States, and provide that "they shall be entitled to an award of prize money *in the same manner* as if such *vessel belonged to the navy.*" Thus it will be seen that Congress is careful to restrict this class of vessels to the law regulating such subjects for the navy. Having already passed a law (acts of special session 1861, hereinafter cited) on that subject, and defined the classes of cases where prizes of war might be made, they extend the provisions of that law to this class of armed vessels, and give them the benefit which the navy might enjoy by law generally in all captures. But they studiously avoid giving the right to such vessels to make captures on land or the inland waters of the United States, where the prize jurisdiction has not been extended by them. They simply confer upon them the same rights which they have conferred upon the navy. They go no further, and evidently designed to avoid conferring any other power than that conferred by the act of 6th August, 1861. In this way Congress has afforded us an interpretation of that act, which explodes the theory of the captors with respect to seizures on land and the inland waters of the United States. They confer no such jurisdiction, unless it is found in the act of 6th August, 1861. They seem to be satisfied with that act, for they have left it undisturbed, unless, indeed, they changed the rule of distribution in the law above cited from the acts of 1862.

II.

6th. The gunboats, in this Red River expedition, were a part of the army, and controlled in all their movements by the army. They did not precede or accompany the army, but came after it. They were to form *water batteries* for the army, and were not charged with, and had no authority to, set on foot independent expeditions, either to capture property or engage the enemy. They were to *assist* in carrying out the plans of the Major General commanding the whole expedition, and not to engage in any other enterprises. In so far as they departed from this well-defined purpose, they acted unlawfully, and all they did, or suffered to be done, was illegal and void.

Independently of the well-known facts attending this expedition, and the cause of its final failure, one of the Lieutenants commanding in this naval fleet (James P. Foster) says, in his deposition, that "the expedition was conducted by the naval service on the river, by the army on the land, *both acting together.*" (Printed Record, page 24.)

Lieutenant Ramsey, commanding, also, in this expedition, says, in his deposition, (Printed Record, page 24,) "Fort DeRussey, with its guns and part of its garrison, was in possession of our *troops* when I got there." At another place in the Printed Record, (page 34,) Cornelius Voorhees says: "Fort DeRussey being captured by the *land* forces under command of General A. J. Smith of the Federal army," &c.

Thus, it will be seen that when the naval forces came into Red River, they found the route free from military obstructions, and the country in possession of the Federal army. It was *after* this they commenced seizing cotton. This they did without orders from Major General Banks, acting independently of him and his expedition. All they did was without warrant of law, and all their acts were illegal and void. They took nothing thereby for which they can be protected. They were wrong doers, and shall not now be suffered to take advantage of their own wrong. 13 Homand, 126.

But if they were not restrained and could not make movements except by the orders of General Banks, it will not be denied that the naval commanders were wrong doers in following after his army and seizing property which had already been captured by his forces. Their unlawful seizure possessed none of the elements of conquest, the cotton being then under the control and jurisdiction of our conquering army, or, having been by that army freed from the control of the rebels, was then held by its loyal owner, free from the taint of enemy property, such as might have attached to it before it was thus freed. In either point of view, the navy, by its act of usurpation, acquired no rights which they can successfully assert in this case.

Having been released from the grasp of the enemy by the sole agency of the army several days before the navy made its appearance in Red River, it cannot be claimed that it was a capture made by the

joint operation of the army and navy; so that even if that fact existed and would confer right of prize of war, nothing can be claimed for it in this case.

The statement of Lientenant Commander Foster, on p. 24, Printed Record, shows that this naval expedition was to be co-operative with the land forces, and the public history of the expedition, so well known, will be taken judicial notice of by the court. The whole was commanded by Major General Banks, whose plans embraced the co-operation of the navy, which was to do for him what it did under Commodore Foote for General Grant and General Halleck, on the Tennessee and Cumberland Rivers, viz., *assist*, with its water batteries in reducing fortified points, and moving our troops when water transportation was necessary, and in convoying our transports, ladened with supplies for the army.

It is worthy of remark that the captors fail to produce the orders under which the navy entered Red river, either to show the services they were to render, or what authority they had for seizing cotton. In the absence of this proof, the court will presume that they had no orders from the Government, and none from General Banks, and that they acted without warrant of law. It is obvious that this arm of General Banks's army could not be, was not expected to be, and would not have been suffered to carry on a warfare against the people and property of that country, unless it was in pursuance with and in furtherance of General Banks's orders. It would have been antagonistic to the well-known rules of military discipline and subordination, and would endanger, as it did, or as the delay consequent upon it did, the success of the Commanding General's plans. These being the logical, and, as they proved to be, the inevitable nonsequences of this naval movement, the court will treat their acts as illegal, and their movements, or the seizure of this cotton, as unwarranted by law, or the orders of their superiors, to whom they and their movements were in subordination.

Captures may be made in violation of territorial rights. 2 Gallison, 36, the Invincible.

It may be made fraudulently.—Ib.

In either case the court will not entertain jurisdiction.

Captors have the exclusive right to control the property they capture, and any interference with it in the way of a second capture is fraudulent and void. 2 Gallison, 38.

For no neutral country can interpose to wrest from a belligerent prizes lawfully taken. Ib.

So here, in this case, if this property was captured by the army, as such, any attempt of the naval forces to recapture it conferred upon them no legal right, for their acts, in that particular, were improvident, and conferred no rights of capture on them.

III.

There can be no lawful prize of war in the seizure on land or water of property belonging to loyal citizens, and situate, when seized, in a part of our own country at the time held by our authorities, whose citizens were entitled to the protection of our laws.

The element of a legal capture is, that the property captured is *enemy property*. This character may be given to it either by the circumstances in which the property is found, or by the *acts* or *position* of the owner. Sometimes both concur to stamp the illegal character of the property, but one or the other must exist. Now, we have seen that the owner is free from these infirmities. The printed Record is full of evidence of her loyalty to the Government, both in respect to her *acts* and her expressed sentiment. It is, however, claimed that this property is not free, but is stamped with all of the characteristics of enemy property, and the decision of this Court in the prize cases reported in 2d of Black, 635, is decisive of this point. I respectfully submit that the learned counsel are wholly mistaken in this view. The circumstances of those cases are widely different from those proved in this case. In the first place, there was no question as to the fact that the country whence the property came, in the case of the Crenshaw, No. 163, and the Hiawatha, viz: Richmond, Virginia, was then held and occupied by enemies to the Government of the United States. In the second place, the tobacco was the production of the soil of that country, and it was, as applicable to this state of the case, that the court, p. 674, say "whether property be liable to capture as 'enemy's property,'" does not in any manner depend on the personal allegiance of the owner. "It is the illegal traffic that stamps it as 'enemy's property.'" It is of no consequence whether it belongs to an ally or a citizen. 8 Cran., 384. "The owner, *pro hac vice*, is an enemy," 3 Wash., C. C. R., 183.

Now, in this case, although the property was the production of the soil, and the owner at one time and her property were within the dominion and control of the enemies of the United States, yet *when* these naval authorities seized her cotton, both were in the territorial jurisdiction of the United States, which was then occupied by its authorities and protected by its laws, whose loyal citizens were then enjoying political and civil rights, such as they did enjoy before the country was usurped by the rebels.

In the third place, there was no illegal traffic in this property, the same never having been water-borne, and never having passed into the possession and control of the enemy, and never having been sold by her.

Printed Record, p. 35, Cornelius Voorhees says: "There was an election ordered by Gov. Hahn to elect delegates to a Convention, which was held and delegates elected during the time of the Federal occupation." At the bottom of the same page, he says: "I was arrested by order of Gen. Taylor, (Rebel General,) for taking this

amnesty oath (to the Government of the U. S.) which I have just shown and testified about, and for attending the election and voting for delegates to attend the Constitutional Convention, ordered to be called by Governor Hahn, and was put into imprisonment for thirty days."

This state of things relieved her and her property from the legal infirmities under which they labored before, and she was at once restored to her rights of citizenship and property. Hence, I earnestly, but respectfully, claim that there is not a principle laid down in that case which in any wise controls the case at bar.

The cardinal rule is that as long and while a port or place is occupied by a foreign military force it is a foreign port, &c. U. S. *vs.* Rice, 4 Wheaton. A foreign country is that which is without the sovereignty of the United States, and *exclusively* within the sovereignty of some other nation. It is purely a question of sovereignty. Fleming *vs.* Paige, 9 How. Conquest is a valid title while the victor maintains the *exclusive* possession of the conquered country.

The legal meaning of *dominion* implies rightful possession and authority; as applied to private property, it signifies not merely possession, but possession with rights of property, that of which the person is *dominus;* as applied to public possession, it is the right of legal authority. The Manilla, Edward's Admiralty Rep., per Sir William Scott.

The circumstances of the United States and these insurgent States are peculiar and very different from any presented in the books. In the first place, bands of men have formed combinations to resist the *authority* of the United States in certain of its territory. They deny and will not recognize the laws and authorities of the United States, and have taken up arms to enable them to hold our territory forcibly, to the exclusion of our law officers. We are opposing this rebellious force by armed force, in order that we may re-assert our Government's constitutional authority over this territory. As fast as we can re-possess ourselves of this territory, which we are doing in greater or less quantity as we can, we invite the people to resume their political and civil rights, and extend to them the protection of our laws, backed by our military power. We have done this in the case of Western Virginia, which we re-conquered from the enemy, and that country is now in the full enjoyment of all their political and civil rights; and yet the territory and the people were as much under rebel rule and dominion at one time as was that part of Louisiana now under consideration. The enemy has been since, and is now frequently in the territory of Western Virginia, in strong force, as he is in Louisiana. The duration of his possession has nothing to do with the settlement of the rights of the people acquired, or rather *restored* to them by the act of our Government in resuming its lawful authority over the country. The moment the people were relieved from rebel military rule, the political and civil power of the usurpers were alike broken, and the jurisdiction and authority of the United States were supreme. It gave to the loyal citizen that sor

of *dominion* over his property, accompanied with *rights of property*, such as they did or might have enjoyed ere this rebel rule intervened.

This being a question of sovereignty, we are referred to the rules laid down by our own and other courts, to determine what sovereignty is. We have seen what those rules are, and we have only to inquire whether we held that part of Louisiana as reconquered territory for the time we were in possession? Was rebel rule at an end for that time? *While* we maintained the exclusive possession, we held it by a *valid title*; and it does not matter, as I understand the rule, whether there was a full legal resumption of political and civil authority. It was such conquest and such possession as have been held by all authorities, and by our own Government, as valid, and entitling the loyal citizen to the enjoyment of his rights of citizenship and property. No act of the sovereign afterwards, whether the country is lost again by force of the enemy's reconquest, or by treaty and cession, can change it. The rights which accrued to the citizen by the resumption of this authority by his sovereign have become fixed, and if the subject-matter is within the reach of our courts, he may successfully assert them. The legal disabilities which were cast upon him and his property by the forcible and fraudulent occupancy of the country by insurgents, were removed the moment the United States wrested the territory from them and reasserted its authority. (Halleck's International Law, 789, and authorities there cited.) Vast amounts of property, reaching in value millions of dollars, was released by this single month's possession of our authorities, and found its way into the loyal portions of the United States, by the simple volition of its owners. The legality of the title thus acquired has never been questioned. This case does not differ from them in any respect, except that these naval boats took out this claimant's cotton instead of Government transports. Both were taken out while we held this *exclusive* possession, and there was no enemy there to oppose. The same condition of things, in every respect, existed when citizens were permitted and did take out their cotton, as when these naval authorities took possession of and carried out the cotton of the claimant. No material difference is perceived in the two cases. The navy might as well have captured this cotton of citizens while afloat, or after it reached its destination in the loyal States, as to have taken Mrs. Alexander's cotton. The legal status of the cotton when it reached the loyal States was no better than it was while on Red river, within our lines and jurisdiction. The principle which made the title valid in one place lost none of its power, in that respect, in the other place. *It was the occupancy and resumption of authority by the United States, of that country, which made the title valid in the loyal citizen.* There was no illegal traffic, such as this court referred to in 2d Black, which stamped this cotton as "enemy's property." It was not at that time within the control of the enemy, so that he could use it for war purposes. It was wholly freed from that difficulty.

The rule being, *that the test is the predicament of the property*, and not the sentiment or acts of the owner, the court will look at the status

of both. If the owner is not under the jurisdiction and control of the enemy, then his property being, at the time of the alleged capture, free from that control, is not in the *predicament* which makes it *ex necessitati rei*, enemy property.

Suppose this property, *after* the resumption of authority of our Government over that country, and after the owner had taken the oath of allegiance to our Government, had fallen into the hands of rebels—is there any doubt that they might lawfully confiscate it to their own use? It must appear that at the time of capture this property was within the control of the rebel government, before it will fall under this rule of making it enemy property.

It will not be claimed, for it is not true, that the Government of the United States did not intend, when they retook the possession of that part of Louisiana lying in the Red River country, to hold it substantially and permanently as they did, although it was but for one month. It is a fact, national now, because well understood as part of the history of that campaign, that it was the purpose of that expedition to clear Louisiana and Arkansas of the rebel army and then put it in possession of the civil authorities of the United States. General Steel had already some time before captured and then held all of Arkansas lying north and contiguous to that part of Louisiana, and that movement of General Banks was made for the purpose of better assuring Gen. Steel in his position in Arkansas, as well as to prevent the rebels from further using Red River as a means of communication with Texas and other portions of the revolted States. As long as General Banks held it, it did thoroughly protect General Steel on the south and kept him secure in his position, covering all that part of Arkansas lying south of Little Rock, including the head waters of the Washita and Red rivers. The failure of the naval forces to co-operate with General Banks at the proper time, and other mistakes, caused the enterprise to fail and the country to be abandoned, but not until after the whole country lying between the mouth of Red River and Little Rock in Arkansas, and *Grand Ecore* in Louisiana, had been occupied and held for a month by our troops, and civil authority resumed and exercised by the people in obedience to the laws.

Independently of the above cases cited from our own courts approving the principle I have been discussing, I do not find any authority anywhere which disaffirms it. The cases of Gerasimo, 11 Moore, Privy Council, 101, and of Elphinstone *vs.* Bednechard, 1 Knapp's Rep., Privy Council, 316, are not adversary. These were cases of *original* conquest by the military authorities of a country which never before had the possession or the right of possession of the country, and, the council held, could not exercise valid *civil* authority over the conquered territory then held by the military authority, the purpose being only to hold it under military rule. Whereas ours was a reconquest of this territory and resumption of the rights temporarily interrupted by insurgents. The moment we drove them out of the territory, all of the power of the General Government once more ex-

pressed itself in the form of law, and nothing was wanting to put the people where they were before this interruption but the machinery of government. The General Government assumed its protection over the lives and property of her citizens in this territory, and in return imposed on them the same obligations and duties which pertain to her citizens generally.

If there were no positive law authorizing the court to recognize and enforce these rights with respect to the territory we have and are daily repossessing ourselves of, I most respectfully submit that the rule I am contending for should be declared by this court as a matter of public policy, growing out of the necessities of our peculiar political situation. As the consequences of this rebellion, new rules of property and personal rights have been and will be pressed upon the courts, for which there is no clear judicial or legislative precedent. As there shall be no right without a remedy, so the court will not suffer our loyal people, who have been themselves and their property also placed in peril by this unfortunate conjunction of political circumstances, for which they are in nowise responsible, to go away without redress. When delivered from these perils by the act of the Government, they and their property should be subjects of fostering care by all departments of the Government, where no rights are to be violated and no well-defined principles ignored. The frequency with which this case must recur, and the vast magnitude of the interests involved, will not fail to commend such cases to the favorable consideration of the court, and must form my apology for making this suggestion. In Mitchell *vs.* Harmony, 13 How., 115, it is said: "Where the owner (of property) has done nothing to forfeit his rights, every public officer is bound to respect them, whether he finds the property in a foreign or hostile country or in his own."

IV.

Before the act of Congress, August 6, 1861, page 319, there was no jurisdiction in cases of prize of war on the land lakes or inland waters of the United States, unless it was expressly derived from the law of nations, and if there was, after the passage of that law it was expressly limited thereby.

The 11th paragraph of the 8th section of the 1st article of the Constitution of the United States, declares that Congress shall have power "to declare war, grant letters of marque and reprisal, and make rules concerning *captures* on *land* and *water*." Thus, the power to make rules (laws) concerning captures on land and water is vested exclusively in Congress. Until it has spoken, there is no recognized or valid law authorizing captures on *land* by naval forces, and it may be gravely doubted whether there can be any naval captures made anywhere but on the high seas, in pursuance with the well-known and universally received law of nations. This is the effect of the decision of this court in Brown *vs.* U. S., 8th Cranch,

1. That decision is adopted and approved by Judge Story in his work on the Constitution, vol. 2, paragraph 1,177.

Congress never did pass any law concerning captures on land until the 6th August, 1861. The act of day of 1845, 5th U. S. Statutes at large, 726, goes no further than to extend the jurisdiction of the Federal Courts in matters of *contract* and *tort* on the lakes and navigable waters connecting the same arising in or upon or concerning steamboats or other vessels of 20 tons burden and upwards, enrolled and licensed for the coasting trade, and at the time employed in business of commerce and navigation between ports and places in different States and Territories, as was at the time of the passage of the law possessed and exercised by the District Courts in like cases of like steamboats and other vessels employed in navigation and commerce on the high seas or the waters within the admiralty and maritime jurisdiction of the United States.

It is obvious that Congress did not intend to extend maritime or admiralty jurisdiction generally over the lakes and inland waters of the United States. They expressly limit it to cases of *contract* and *tort* arising out of commercial transactions with steamboats, &c., on those waters. Thus the jurisdiction became, and was limited by Congress, in the most clearly expressed and well-defined language. Whatever may have been its jurisdiction before, this law limited and confined it, as to those waters and streams.

The Genesee Chief case, 8th Howard, 452.

This is the only law of Congress which, it is claimed, gives admiralty jurisdiction to the District Courts on the lakes and inland rivers, and the Court in the case just cited claimed that if the power granted by this statute is constitutional, then there is an equal *necessity* for the instance and prize power of the Admiralty Court to administer international law, and if the one cannot be established, neither can the other. This language of the Court must be taken and construed with the view to the facts of the case then before it, more especially when it appears that the learned Chief Justice who read that opinion, when he came to comment on the jurisdiction of the Court, laid particular stress on that provision of the Constitution which declares its jurisdiction extends to "all cases of admiralty and maritime jurisdiction." "But the *extent* of the *power*," says that learned Judge, page 460, "as well as the mode of the proceeding in which that jurisdiction is to be exercised, like the *power* and practice in all the other Courts of the United States, are subject to the regulation of Congress, except when that power is limited by the terms of the Constitution, or by necessary implication from its language." Thus it will be seen that the *power*, in the class of cases under consideration, was reserved to Congress, to which the Court must look for authority to speak and act on that question of jurisdiction. But it was not then considering the 11th paragraph, of the 8th section, of the 1st article of the Constitution, above referred to, applicable alone to *captures by land and water*. Congress had not yet spoken on that subject, and did not

speak until the 6th of August, 1861. *Then* they did declare, in respect to the peculiar circumstances of this rebellion, the class of persons, and the character of the crime they should commit, whose property should be liable to be seized as *prize* and *capture*. For the first time in the history of the Government, the national legislature spoke on this subject, and they limit the jurisdiction of the Court to the classes of cases which should fall within the provision of this law as *prize* and *capture*.

Having this provision of the Constitution in view, Congress declares whose property and for what cause it shall be captured and be subject to the prize of war on land and water. Thus, the jurisdiction of the Federal Courts is *limited* in all cases of prize growing out of this rebellion. Not having declared before this law the limitation in maritime or admiralty cases, it now defines and limits the jurisdiction of the Court, more especially to the cases growing out of this rebellion, where there are captures of prize on land or water.

But it is not clear that Congress intended that property seized by any of the authorities of the United States, belonging to persons engaged in aiding the rebellion, &c., after the 60 days warning provided in the act of the 17th July, 1862, page 589, section 6, should be used for any other purpose than is prescribed in that act. It provides that all of the property shall be used to support the *army* of the United States. This is certainly true of the property of such insurgents taken on land. This enactment would seem to be inconsistent with the theory that captures made on land, without respect to the circumstances of the capture, because made by the navy, must enure to the benefit of the navy as if taken on the high seas. The capture in this case, the captors claim, was made of enemy property. If so, it was because Mrs. Alexander had lent voluntary aid to the rebellion, and thus brought herself within the operation of the act of 1861 or 1862, as already cited. Being found on land, it must be seized, proceeded against, and condemned, and the proceeds applied to the uses named in the act of 1862.

Now, Mrs. Alexander's case does not fall within the meaning of either of these statutes. She was a loyal woman, taking no part in the rebellion, and refusing to lend them any aid or comfort. To bring her case within the operation of these statutes, or either of them, it must appear that she did some act, or suffered some act to be done, to aid, abet, or promote the rebellion. This is not pretended, and no proof is taken to that end. But she proves her devotion to her country and likewise her refusal to aid the enemy in any manner. She also proves that she successfully resisted all attempts that were made to induce her to sell her property to the enemy. See printed record, depositions of Voorhees, Withenbury, &c.

Counsel, however, claim that this act of August 6, 1861, does not operate to circumscribe admiralty jurisdiction in the District Courts of the United States as to captures, but leaves the general jurisdiction where it was before the passage of this act. To this I reply, that the general jurisdiction may remain the same as to captures made

on the high seas, but I submit that the jurisdiction is expressly limited as to captures made on *land*. Congress never having exercised its power to regulate that class of captures until the passage of this act, it must be taken and held to name in this act the only class of cases where that extraordinary power does exist and may be exercised. It takes away from the courts the jurisdiction claimed of land captures made in pursuance to the law of nations, and by clear implication declares its purpose that that power shall not be exercised except in the classes of cases named in the act. It is a law passed in pursuance with a constitutional power, which alike excludes the jurisdiction which before existed, if it did exist at all, and circumscribes and constrains the jurisdiction in land captures to the cases specially indicated. It is said further that because Mrs. Alexander's case is not embraced by this act, that it may be a case of prize of war according to the law of nations, and the case of the Sally, 8 Cranch, 384, is cited in its support. I do not see the force of the illustration. There, a general statute, passed in pursuance of no constitutional provision, was sought to be intervened between the United States and the captors. Here is a statute passed under a special grant of constitutional power, requiring Congress to pass a law governing cases of capture on *land* and water. It defines captures *on land*. It is a *legislative construction* given for the first time since the Constitution was adopted. It over-rides and supervenes all other constructions of the law of capture as applied to captures on land, whether international or municipal. It is the highest law known to our country. It is the only law which can confer jurisdiction on the District Courts in cases of land captures. By its passage, whatever jurisdiction they had in admiralty and maritime matters, were, in this particular, limited and constrained. But the court conclude their decision in the 8th of Cranch, by declaring that the language of the 4th, 6th, and 14th sections of the prize act of 1812, are sufficient to authorize them to reject the claim of the United States, so that they found municipal law for the case, which at last controlled them in its final disposition.

But this view is further strengthened by the provisions of the act of 12th March, 1863, page 820. It provides for securing for the exclusive use of the Government all abandoned or *captured* property in any State or Territory, &c., designated as in insurrection against the lawful Government of the United States by the proclamation of the President of July 1st, 1862, which names Louisiana as one of such States.

The 6th section provides that it shall be the duty of any officer or private of the regular or volunteer forces of the United States, or any officer, sailor, or marine in the naval service of the United States, *upon the inland waters of the United States*, who may *take* or secure any such abandoned property, or cotton, sugar, rice, or tobacco, from persons in such insurrectionary districts, or have it under his control, to turn the same over to an agent appointed as aforesaid. And then

the section proceeds to name the punishment which will follow a refusal or neglect on the part of any officer, &c.

Here Congress has, in terms not to be misapprehended, taken away from these captors the right to claim this property, if it is to be called abandoned or captured property, and ordered it to take a very different direction. The law is pointed at the Army and the *Naval* service upon the *inland* waters. But, as if not satisfied with excluding these gunboats on the inland waters, Congress, in the 7th section, distinguishes between that branch of the naval service and *lawful maritime* or naval force. Thus, we have another legislative construction adverse to this claim of land prize.

But we have further aid in this view of the subject. The Secretary of the Treasury, under the sanction of the President of the United States, on the 30th July, 1864, defines the term "captured property," as used in this act, to mean "that which *has been* or may be seized or taken from hostile possession by the military or *naval* forces of the United States." Page 31.

Again; the Secretary of War, on the 31st March, 1863, General Order No. 88, page 50, of the same pamphlet, reiterates the above act of the 12th of March, and orders every officer, or private, &c., to observe and carry out the provisions of that law.

Again: the Secretary of the Navy, on the same day, issued a circular of instructions to the Navy, and orders every officer, sailor, or marine, to observe and obey that law, and deliver the abandoned or captured property as provided for in that law. Same pamphlet, page 54.

This law, and these instructions, were in full force when the capture was made of claimant's property. They took away from the captors all legal right to seize the property for any other purpose than the one named in the act. Whether called "abandoned" or "captured" property, it still fell within the operations of this statute and these instructions of the Secretary of the Navy. It either belonged to the claimant or to the Government. These captors had no interest in or title to it.

These laws and orders are directed with terrible force against these captors and their attempt to appropriate this property to their use as prize of war.

Their fraudulent attempt to stamp this cotton as property belonging to the so-called Southern Confederacy, by marking it with its initials "C. S. A," (printed Record, page 35,) cannot avail them. Still, it was abandoned or captured property, or was unlawfully taken from the claimant.

But Congress has given another legislative precedent on this point. On the 2d July, 1864, page 377, sec. 7, they declare "that no property seized or taken upon any of the *inland waters* of the United States by the naval forces thereof shall be regarded as *maritime prize*, but all property so seized or taken shall be promptly delivered to the proper officers of the courts as provided in this act, and the said act approved March 12th, 1863."

This act, also, has great signifiance as interpreting the meaning of the words "*lawful maritime prize*," as used in the 7th section of the act of 12th March, 1862. It declares that captures on the inland waters shall not be regarded as lawful maritime prize. If this prohibition applies to captures on inland waters, it applies with greater force to captures made by the same class of naval vessels on the land lying on and contiguous to such inland waters.

Thus, the National Legislature, whenever it has spoken on this subject of land captures, has uniformly denied the power claimed for the Navy in express terms of prohibition, or in such terms of exclusion, as left the power of doubtful value, but in every instance has stripped it of the international support sought to be given it by the captors, and left it purely as a municipal question.

V. The good faith of the Government is involved in this attempt to wrest from this claimant her property. She took the oath of allegiance, (see the latter part of printed Record,) in accordance with the invitation of the President's proclamation, December 8, 1863, as did thousands of the people in that part of Louisiana. She is entitled to an honest and faithful compliance on the part of the Government with all the terms of pardon and exemption as to herself and her property of that proclamation. It is not acting in good faith with her to take her property and treat it as *enemy* property, when she so promptly responded to this Executive invitation. That proclamation, having been issued by the President of the United States, in so far forth as it held out inducements and made promises, and persons acted under and in pursuance with it, constitutes a legal contract, which shall be alike binding on the Government and such persons. Although it is established that Mrs. Alexander did not fall within the class of persons for whose benefit this proclamation of amnesty was issued, yet her property, up to the time that our forces relieved it and that country from rebel rule, was, by reason of its position, tainted with the quality of enemy property in view of the ruling of this court, in the 2d of Black. But the moment she took the oath prescribed by that proclamation she was entitled to the full benefit of the "restoration of all rights of property," as therein promised, so far as this cotton is concerned.

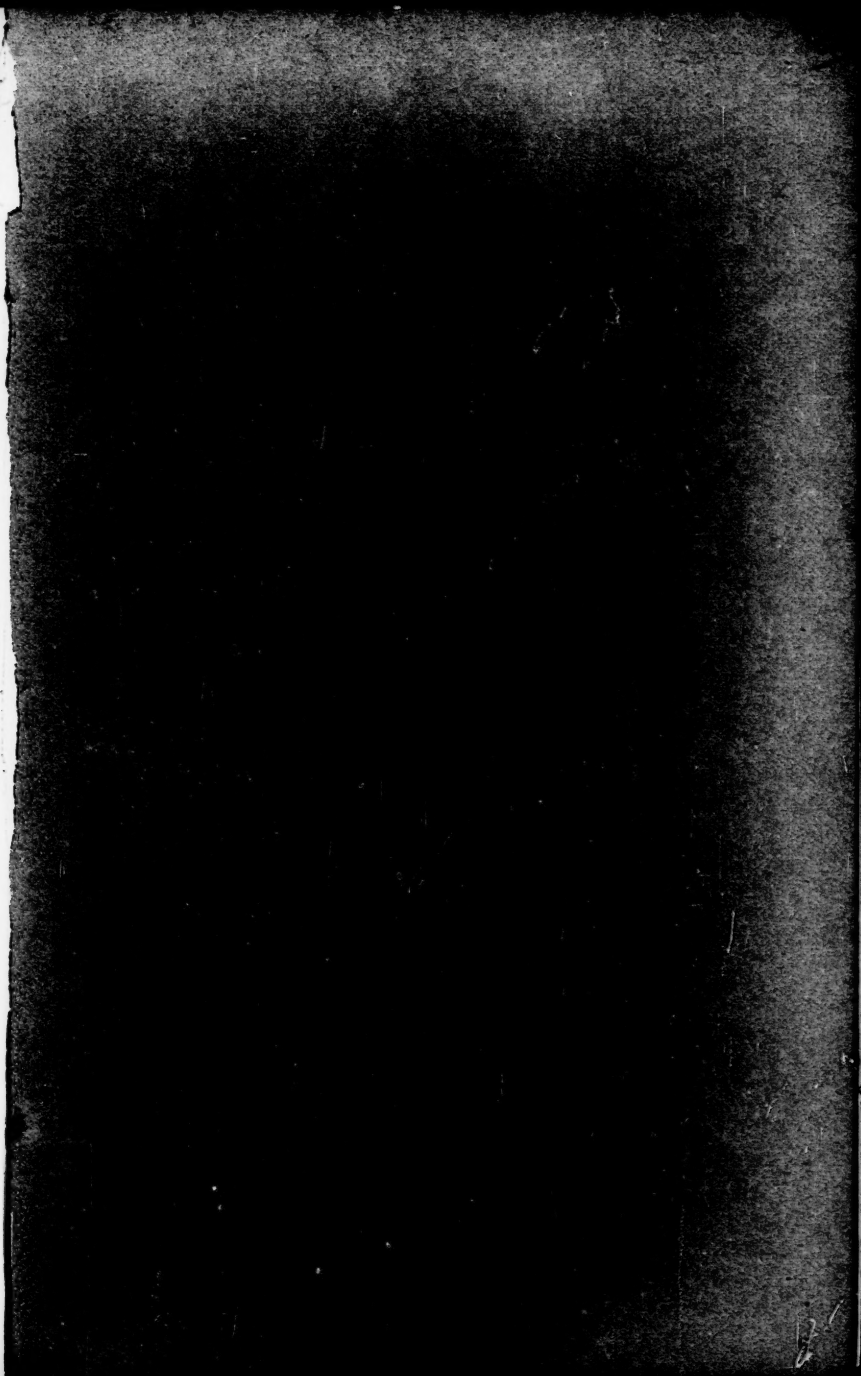
The proclamation promises two cardinal matters to such loyal people as regard its injunctions and live up to its invitations and exactions: 1st. Full pardon for political offences, with restoration of all rights of property, &c.; and, secondly, the re-establishment of their State governments and the resumption of all political, personal, and religious privileges and rights of property. Accepting these generous terms, the people of Louisiana, in undoubted good faith, took all the needful steps to re-establish their State government, thus securing to themselves the benefit of those provisions of this State paper, emanating from the executive head of the General Government. Whatever may be the legal effect of these steps on the question of the re-establishment of a valid constitutional government, the General Government will carry out the promises and agreements of the

President in so far as the rights of property and exemptions from political crimes are involved. The courts have ever regarded such promises, and have enforced them.

13 Howard, 115, Mitchell *vs.* Harmony.

Under all the circumstances, and in view of the law, I respectfully submit that the judgment of the court below shall be affirmed.

R. M. CORWINE,
Of Counsel for Claimant.



2271

Supreme Court of the United States.

IN PRIZE.—No. 360.

UNITED STATES, APPELLANTS,

vs.

SEVENTY-TWO BALES OF COTTON,
ELIZABETH ALEXANDER, CLAIMANT.

BRIEF FOR THE UNITED STATES AND THE CAPTORS.

JAMES SPEED,
Attorney General.
CHARLES EAMES,
Counsel for Captors.

McGILL & WITHEROW, Printers and Stereotypers, Washington, D. C.

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SEVENTY-TWO BALES OF COTTON,
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BRIEF FOR THE UNITED STATES AND THE CAPTORS.

This is an appeal by the United States from decree in prize of the United States district court for the southern district of Illinois.

The seventy-two bales of cotton, the proceeds of which are claimed in this cause, formed part of six hundred and thirty bales which were captured in Louisiana as prize of war by naval forces of the United States, on different days during the months of March and April, 1864, and duly sent into Cairo and reported together to the district judge for adjudication. After libel, and before the filing of claim and answer, the whole of the cotton was sold by order of court, and the proceeds duly deposited, subject to its further order.

The libel, filed on the 18th of May, 1864, avers that the property was captured on or about the 20th of March, 1864, as prize of war, on waters navigable to the sea, or on lands adjacent thereto, by the navy of the United States, and is within the jurisdiction of the court and is lawful prize of war; and decree of condemnation as such and distribution according to law are prayed.

The claim and answer of the owner and claimant, by her duly authorized agent, filed on the 17th of June, 1864, avers that the cotton was seized on land by persons belonging to the navy while it was stored in a warehouse at claimant's planta-

tion; that claimant is a citizen of the State of Louisiana and of the United States, and has never taken part in the rebellion; and denies that the cotton is enemy property or lawful prize of war, and prays decree of restoration.

On the 16th of June leave was granted by the court to either party to take further proof, upon which, as taken by both parties, hearing was had; and on the 5th of December last, decree passed in the court below, pronouncing the libel not sustained as to the seventy-two bales of cotton claimed by Elizabeth Alexander, and adjudging that the proceeds thereof be paid to her.

From this decree this appeal is taken.

Before decree passed more than two thousand additional bales of cotton, similarly captured about the same time, were also, in like manner, sent in for adjudication, and libelled in three other separate suits, and then sold under order of court, and proceeds, amounting in all to about a million and a half of dollars, duly deposited, and being claimed by several claimants, and the libels all being of like tenor, the four suits have been consolidated into one, by the court, upon motion of the claimants, and these several claims now pend in the court below, awaiting adjudication of this appeal.

STATEMENT OF FACTS IN THIS CASE.

The facts attending the capture of the seventy-two bales of cotton now claimed, and their ownership by the claimant, at the time of capture, appear not to be doubtful nor disputed.

On the 26th or 27th of March last, this cotton, alleged to be a part of the crop of the year 1861, and stored in a cotton gin house on a plantation on which it was grown, bordering on the Red river, and then, and now, and for twenty years last past, owned and resided upon by the claimant, in the parish of Avoyelles, in Louisiana, was captured exclusively by the officers and crew of the U. S. gunboat Ouachita, then with many other naval vessels composing the Mississippi squadron, under the command of Rear Admiral Porter, and engaged in co-operation with the army, in a belligerent expedition up the Red river. The cotton gin house in which the cotton was stored and captured appears to have stood about a mile back from the bank of the river. The claimant's plantation appears to be about fifty miles westward of the confluence of the Red and Mississippi rivers, and about an equal distance below and eastward of Alexandria, a principal town on the Red river, and at the commencement of the expedition, the headquarters of the rebel military department, embracing the region traversed

by the expedition. Fort De Russey, a chief stronghold of the rebels on the Red river, is a few miles below the locality of the capture.

Up to the time of the commencement of the expedition and its entrance into the Red river, on the 12th of March last, fourteen days before this capture, the civil jurisdiction of the rebels, over the entire interior region traversed by it, through the central river route of about 450 miles from the mouth of the Red river, by Fort De Russey and Alexandria up to Springfield Landing, in the northwest part of Louisiana, appears to have been undisturbed, and the military occupation of the whole district of country by the rebel forces, to have been complete ever since the breaking out of the rebellion. The seizure or purchase by the rebel authorities of cotton grown and stored throughout that district of country is notorious and in proof. The contributions, either voluntary or compulsory, by the resident population of labor and supplies for the support of the rebellion is proved and not doubted. Some of the population appear to have been opposed to the secession movement, and some, in its favor.

The conjoint Union expedition consisted, at its commencement on the 12th of March, of a column of troops, under Gen. Banks, proceeding overland through the country south of the Red river towards Alexandria, and of some twenty armed vessels of the squadron, moving up the Red river to the same point, accompanied by army transports bearing about 10,000 troops of General Sherman's corps, under command of Brig. General Smith. Rendezvous of the squadron with General Banks's force was fixed for the 17th of March at Alexandria. It is fully in proof that as the squadron and the transports went up the Red river, they found it obstructed by the rebels, and the whole district of country on both sides of the river, from its mouth to Alexandria, occupied by the rebel troops in force, and completely in enemy pessession and under enemy rule. At Rort De Russey there was a strong rebel garrison. The fort was reduced on the 15th of March, and a part of its garrison captured, mainly by General Smith's forces, previously landed from the transports. The navy, by its guns, however, participated, in so far as possible, in the attack. The main body of the enemy, five thousand strong, which had come out of the fort to fight, retreated towards Alexandria, followed by Gen. Smith on land, while the fleetest gunboats of the squadron were ordered by the Admiral to hasten on up the river, through the obstructions, and, if possible, cut off the escaping enemy.

The Ouachita was one of the gunboats selected for this service; and on the evening of the 16th of March, Admiral Porter,

off Alexandria, reported to the Navy Department the town and its fortifications in possession of the troops of General Smith, after a sharp attack of two hours, the enemy in retreat, and General Banks, with his force, daily expected. At the end of March, General Banks having previously arrived, the combined expedition proceeded up the river towards Shreveport, the co-operation of the squadron being deemed so essential that the Admiral undertook to push some of his gunboats along over the falls. The rally and return of the enemy army; the falling back of the Union troops before it, with some disaster; the immediate re-occupation of the region by the rebel forces, and the memorable and unexampled rescue of the gunboats from the combined perils of continuous enemy attack and of stranding in the falling water of the river, are of the well-known naval history of the country.

It was during the period of this temporary dispersion and retreat of the rebel troops before the Union forces in the Red river district below Alexandria—a period extending at the farthest only from the middle of March to the last of April—that on the 26th or 27th of March the capture of this cotton was made by the gunboat Ouachita, then patrolling the river. In the act of capture no part of the land force had any participation.

It was during the same brief period of the eviction of the hostile military occupation of the region, and before its swift return and reinstatement, that, under the direction and protection of General Banks, some sort of an election for delegates to a Union convention seems to have been held, or at least attempted, in and about Alexandria, sometime in April; but in this cause, that fact, such as it was, in that region, is considered to be of no importance, and is here mentioned only because it seems to be in some way or degree relied upon in support of some of these claims.

Of the personal loyalty or disloyalty of the claimant nothing more need here, and in this proceeding in prize, be said than that, about three weeks after the capture of her cotton, she appears to have taken the oath of allegiance in pursuance of the Amnesty Proclamation of the President, of December 8th, 1863. In view of the present claim, this proceeding by the claimant was certainly prudent and expedient; though too late, we suppose, to have, under the terms of the proclamation, any effect in this cause.

It is proper to add, though not important in this appeal, that the some two thousand additional bales of cotton above referred to, and appearing in this record as similarly captured and libelled, were taken during the months of March and April last,

on the river banks, by the gunboats of the squadron, exclusively in similar detached belligerent expeditions in the interior of Louisiana, up the Yazoo, Wachita, and Black rivers, tributaries of the Red river and the Mississippi, and all flowing through districts of country, at the time of the expedition, under rebel control and occupation, civil and military, which it was the object of the expedition to evict.

(In proof of the above stated facts, in so far as they appear in evidence in the Record, *see* report of Fleet Captain Pennock, (*Record*, p. 1,) and depositions of Lieutenant Commanders Ramsey and Foster, at pp. 23, 24, and 25 of the *Record;* and of the witnesses Withenbury, McLaughlin, Barlow, and Voorhees, in behalf of the claimant, at pp. from 26 to 36, inclusive, of the *Record.*)

(As to character and incidents of the Red river and other expeditions by the Mississippi squadron, at the time of this capture, as matter of history, see Annual Report of the Secretary of the Navy of 5th December, 1864, at page XV of the volume, with appendix at pp. 514, *et seq.*, containing official reports of Rear Admiral Porter and other officers of the squadron.

For convenience of reference by the court, pertinent extracts from these official public documents, as published by Congress, are subjoined as an appendix to this Brief.)

POINTS.

Upon the facts of this case, above stated, as appearing in evidence upon the Record, or otherwise duly made known to the court, we submit for the United States and the captors the following points:

FIRST POINT.

If on the 26th of March last, the day when this cotton was captured, the interior region of Louisiana, where the capture took place, was, as against the Government of the United States, *enemy country* in the sense of the Law of Prize, then the commercial property of its domiciled inhabitants, *without regard to their personal loyalty or disloyalty*, was, if found on the *high seas*, liable to capture and condemnation as enemy property and lawful prize of war. Especially, in such case, is this liability indisputably true of the staple commercial product of the soil of that region, grown and gathered in time of war, and then so found at sea in the continuing ownership of such domiciled owner of the producing enemy soil.

(*a.*) In view of the early and later adjudications in prize of British prize courts, it is considered that neither of these two propositions as above stated was ever really open to serious doubt in this court. Three —and enough—of these British cases adjudged directly to the point are *The Phenix*, 5 *Rob.*, 21, decided in 1803, and citing *The Juffrow Catharina*, decided by the Lords on appeal in 1783 ; and *The Anna Catharina*, 5 *Rob.*, 167, decided in 1804.

(*b.*) But if such openness to doubt in this Court ever existed it has been effectually precluded by two leading and unanimous decisions of the Court—the first being the case of *Bentzon* vs. *Boyle*, 9 *Cranch*, 191, affirming and applying the old British rule ; and the second being the case of the *Amy Warwick*, in the Prize Cases, 2 *Black.*, 674, in which, though there was weighty dissent as to the legal state of this country at the time of that capture on the 10th of June, 1861, there was unanimity, by that dissent made even more impressive, as to the principle and the rightful application of the rule of Prize in all time of duly recognized territorial civil war, and as to the conclusion that such war existed in law and in fact from and after the passage of the Act of 13th July, 1861.

SECOND POINT.

But in the case assumed of the enemy character, as against the United States, of the district of country through which the Red river in the whole of its course flows, then such commercial property, so grown and so owned, is *a fortiori* lawful prize of war, if captured *afloat on Red River* by duly commissioned belligerent naval force of the United States.

(*a.*) Because in that case the Red river takes on its character from the enemy character of its riparine territory and inhabitancy on both sides of it and from its source to its mouth, and thus becomes itself, in the sense of the law of prize, *enemy inland water ;* and it is confidently submitted that no judge in his seat of judgment ever decided nor ever said *obiter*, and no juridical writer in his treatise or text-book, ever declared or intimated that a belligerent government may not, by its duly commissioned naval force, lawfully capture and condemn in its own prize court, its enemy's commercial property found afloat

on *his inland waters*, being his harbors, bays, creeks, or rivers. Such right of naval capture of such property afloat on such inland waters, is just as well settled and familiar and extensive as the right of capture on the high seas. We do not cite authorities to a point like this, when there is no pretence of any doubt or disagreement among the authorities which touch the subject, and when so many of them do touch it.

(*b.*) We say further, on the assumption that northern and central Louisiana, through which Red river flows, was, at the time of this capture, in the sense of prize law, enemy country as against the United States, then it is grave, and, as we think, very manifest error in law, to hold that Red river was at that time, in the view of that law, to be considered as an inland water of the United States, or, indeed, anything else but an inland water of country hostile to the United States —an enemy river, therefore, just as much enemy as if it were foreign, and enemy just so long and just so far, as the country along its banks was enemy country. Whether, then, there was or not, at the time of this capture, a quality of maritime prize of war in enemy commercial property *afloat on the inland waters of the United States, and on those waters captured by the navy*, we hold, upon the views above stated, that there was indisputably at that time such quality of maritime prize of war in such enemy property so captured *afloat on Red river*, if northern and central Louisiana, were then, in the view of prize law, enemy country.

(*c.*) In support of this Point, we rely upon *The Gerasimo*, and cases there cited, 11 Moore P. C., 101; and also upon the views expressed in *United States* vs. *Rice*, 4 *Wheat*, 246, and in *prize cases*, 2 *Black*. 674, and in *Brown* vs. *United States*, 8 *Cranch*, *pp.* 131, *et seq. et cas. cit.* See also *Twee Gebroeders*, 3 Rob. 338 ; and 1 *Phill.*, 171 ; also *Wheat by Lawrence*, 346, *et seq.*

THIRD POINT.

But if, wholly contrary to our view, Red river is to be considered in the sense of prize law as being at the time of this capture merely an internal navigable river of the United States, then we hold that at that time the right of the navy of the United States to capture as prize of war enemy commer-

cial property found afloat on the internal navigable rivers of the United States was clear and unquestionable; and that such property so captured, was, at that time, by the general law of prize, and by the law of the United States, as expounded and applied in this court to such navigable rivers, and by statute, clearly condemnable as prize of war in the prize courts of the United States, if after the commencement of the war it had been by the enemy either produced or acquired, or brought within the jurisdiction of the United States.

(*a.*) By the general prize law; because by that law your enemy cannot claim exemption from capture by your navy of his commercial property afloat in *his* internal waters, nor in *your* internal waters, if brought there by him in time of war, any more than on the high seas; but only in waters *within neutral jurisdiction;* and even of your act of such capture *there*, your enemy cannot complain as against you, but only the neutral sovereign can complain of your act.

3 *Phillimore Int. Law*, 452–3, *and* 1 *Kent Comm.*, 69 *and* 126, where authorities are collected; and 2 *Black*, 687.

(*b.*) By the law of this country as adjudged by this court;

See *Genesee Chief*, 12 How., 453–4, where, after full consideration, right of naval capture of prize of war on the lakes and other internal waters, including "navigable streams which flow through the Western States," and the *prize jurisdiction* of our courts of admiralty over such naval captures, are assumed by this court as an undoubted legal *postulate* from which the similar necessity of the ordinary *instance jurisdiction* of courts of admiralty over the same waters is inferred and claimed as pertaining to the equal rights of the States of the Union under the Constitution.

(*c.*) By Statute; See statute of 1863, chap. 120, (March 12, 1863,) saving in its last section all rights of naval prize in property captured *in any insurrectionary State or Territory*; also statute of 1861, chap. 60, imposing the character of prize and liability to capture and condemnation as such in the courts of admiralty, upon all property in a certain predicament, *wherever found.*

FOURTH POINT.

If, at the time of capture, these seventy-two bales of cotton were enemy commercial property, and if they were captured in enemy country by the naval force of the United States, engaged at the time and place of capture in belligerent operations, then the capture, *though made on the land*, was lawful; and the property being so captured was and is lawful prize of war and condemnable as such in the prize courts of the United States.

(*a.*) Naval captures of enemy property on land in enemy country are an ancient, lawful, and usual method of warfare; and the prize jurisdiction of courts of admiralty in England has always been exercised in such cases of belligerent naval capture on land, as much as in cases of naval capture on the high seas; and this, too, whether such capture on land be made by the naval force acting alone or in co-operation with the army; and enemy property so captured has always in England been condemned as prize of war.

All this legal doctrine was, after exhaustive discussion of the whole subject, solemnly affirmed by unanimous judgments of the Court of King's Bench in the year 1781, in the two great cases of *Lindo* vs. *Rodney*, *Doe* [illegible] *Eden* and *Lindo* vs. *Rodney*, *Dou* [illegible] he Lord Mansfield delivering the judgm [illegible] er in the latter case. The earliest Bi [illegible] ia- are there cited and reviewed. Since [illegible] he ments, no part of the law laid down [illegible] disputed in England; but, on the contrary, it has been re-affirmed by the courts of common law as in *Lord Camden* vs. *Howe*, 4 *T. R.*, 382, and *Smart* vs. *Wolff*, 3 *T. R.*, 323; and has been accepted and applied by Lord Stowell in the High Court of Admiralty in a series of cases of naval captures on land, among which are *Captures at Cape of Good Hope*, 2 *Rob.*, 274; *Thorshaven*, *Edw.*, 102; at *Trinidad*, 5 *Rob.* 85; *Stella Del Norte*, 5 *Rob.*, 411; *The Rebekah*, 1 *Rob.*, 377; and also affirmed by the Lords Commissioners of the Privy Council, *The army of the Deccan*, 2 *Knapp*, *P. C.*, 152, *and note*.

It will of course be borne in mind that in all these British cases of *naval capture on land*, with or without co-operating land force, from the earliest cited in

cial property found afloat on the internal navigable rivers of the United States was clear and unquestionable; and that such property so captured, was, at that time, by the general law of prize, and by the law of the United States, as expounded and applied in this court to such navigable rivers, and by statute, clearly condemnable as prize of war in the prize courts of the United States, if after the commencement of the war it had been by the enemy either produced or acquired, or brought within the jurisdiction of the United States.

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3 *Phillimore Int. Law*, 452–3, *and* 1 *Kent Comm.*, 69 *and* 126, where authorities are collected; and 2 *Black*, 687.

(*b.*) By the law of this country as adjudged by this court;

See *Genesee Chief*, 12 How., 453–4, where, after full consideration, right of naval capture of prize of war on the lakes and other internal waters, including "navigable streams which flow through the Western States," and the *prize jurisdiction* of our courts of admiralty over such naval captures, are assumed by this court as an undoubted legal *postulate* from which the similar necessity of the ordinary *instance jurisdiction* of courts of admiralty over the same waters is inferred and claimed as pertaining to the equal rights of the States of the Union under the Constitution.

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All this legal doctrine was, after exhaustive discussion of the whole subject, solemnly affirmed by unanimous judgments of the Court of King's Bench, in the year 1781, in the two great cases of *Le Caux* vs. *Eden* and *Lindo* vs. *Rodney*, *Dougl.*, 594 to 620, Lord Mansfield delivering the judgment of the court in the latter case. The earliest British authorities are there cited and reviewed. Since these two judgments, no part of the law laid down in them, has been disputed in England; but, on the contrary, it has been re-affirmed by the courts of common law as in *Lord Camden* vs. *Howe*, 4 *T. R.*, 382, and *Smart* vs. *Wolff*, 3 *T. R.*, 323; and has been accepted and applied by Lord Stowell in the High Court of Admiralty in a series of cases of naval captures on land, among which are *Captures at Cape of Good Hope*, 2 *Rob.*, 274; *Thorshaven*, *Edw.*, 102; at *Trinidad*, 5 *Rob.* 85; *Stella Del Norte*, 5 *Rob.*, 411; *The Rebekah*, 1 *Rob.*, 377; and also affirmed by the Lords Commissioners of the Privy Council, *The army of the Deccan*, 2 *Knapp*, *P. C.*, 152, *and note.*

2 Brown PC 423

It will of course be borne in mind that in all these British cases of *naval capture on land*, with or without co-operating land force, from the earliest cited in

Lindo vs. *Rodney* down to the later adjudged by Lord Stowell, the question has never been of the *right* or *lawfulness* of such captures. The property being enemy and usually captured in enemy country, no doubt is intimated that the capture is legitimate. The question discussed and set at rest is of the prize jurisdiction of the admiralty courts in such cases. The application of that jurisdiction by Lord Stowell, as being no longer in doubt, is the sense of the cases above cited as adjudged by him. They are generally cases of naval and military co-operation.

In the United States this *British* view of the prize jurisdiction of the court of admiralty in England over such naval captures on land, has acceptance and sanction by our highest authorities.

1. By this Court, in *Brown* vs. *United States*, 8 *Cr.*, 137, both in the judgment of the court and in the dissenting opinion of Mr. Justice Story, whose views on these points being then undisputed by the court, have since been, in the judgment of this court, delivered by Mr. Justice Grier in the prize cases, 2 *Black*, affirmed as "fully substantiated by authority;" in *Jennings* vs. *Carson*, 4 *Cr.*, 2, Judge Marshall delivering the opinion of the court; and especially in Mr. Justice Peters's decision, *Note*, 4 *Cr.*, 5.

2. By the Circuit and District Courts; in *The Emulous*, 1 *Gall.*, 563, by Story, J.; in *United States* vs. 292 *Bales of Cotton*, Circuit Court at St. Louis, 1862, Mr. Justice Miller delivering the opinion of the court, 10 *Law Register; United States* vs. 680 *Pieces of Merchandise*, District Court of Boston, 1863, Mr. Justice Sprague delivering the opinion.

This last decision, by a learned Judge of great experience in Admiralty cases, and generally regarded as very high authority in the law of prize, is deemed strictly pertinent to the main questions involved in this appeal, and, indeed, conclusive adjudication of most of them, if it shall receive the sanction of this court. A report of the case, apparently exact, published in Boston newspapers, is subjoined in the Appendix; not having been published, we believe, as yet, in any more permanent form.

By these decisions the right of capture by naval forces of enemy property on land, in enemy country, in separate or co-

operating belligerent expeditions, is considered to be completely established, and also the prize jurisdiction of British courts of admiralty over property so captured.

(*b.*) *But the district courts of the United States* have all the jurisdiction of the British courts of admiralty, both in prize and on the instance side.

The leading and governing case of *Glass* vs. *Sloop Betsy*, 3 *Dall.*, 6, unanimously decided by this court in 1794, put this point at rest. Its authority never seriously questioned as to this point, has been continually recognized, as in *Talbot* vs. *Jansen*, 3 *Dall.*, 123; *Brig Allerta*, 9 *Cr.*, 359; and *Story's App. to* 2 *Wheat.*, 1.

(*c.*) This view as to naval captures on land and the prize jurisdiction over them, both in England and this country, is stated and affirmed as indisputable by Chancellor Kent, 1 *Comm.*, 394–5; and by Phillimore, 3 *Int. Law, part IX, chap. VIII, sec.* 177.

(*d.*) *Judiciary Act* 1789, *sec.* 9, and *statute* of 1861, *chap.* 60; and *statute* of 1862, *chap.* 185; placing from and after July 16, 1862, the Western gunboat fleet exclusively under the Navy Department.

FIFTH POINT.

At the time of this capture, and before and afterwards, the whole region of Louisiana in which this capture, and the other captures mentioned in this Record, were made, was unquestionably enemy country; and therefore, upon the reasons and by the authorities above presented, these seventy-two bales of cotton now claimed were, when captured, enemy commercial property; and their capture as prize of war and by right and in fact of war, was lawfully made by the naval forces of the United States; and the property so captured on land is liable to condemnation in district courts of the United States as maritime prize.

(*a.*) The region being, both when the combined expedition entered it in March, 1864, and when the expedition left it in May following, completely in rebel possession and under rebel control, both civil and military, and so held and ruled in hostility to the United States, was, by the unanimous and conclusive adjudication of this court in the prize cases, enemy country. 2 *Black*, 693.

And this judgment has been reaffirmed in several of the prize causes decided in this court this term.

(b.) If there was momentary military occupation of the region in part, by the co-operating Union belligerent forces, on the day of this capture, that fact does not change nor affect the continuing enemy character of the region;

1st. Under the public law; as laid down in the recent and leading case of the *Gerasimo*, and the other cases cited and reviewed in the argument of the *Venice* and the *Circassian* in this court during the present term;

2d. Under the judgment of this court; in the cases of the *Circassian* and the *Andromeda*, just decided, in application of the doctrine laid down in the Prize Cases, *ub. sup.;*

3d. In view of the constant belligerent activity of the expedition, so long as it remained in that district of country, and of the immediate and belligerent reinstatement there of the hostile rebel occupation and rule.

(*c.*) And especially was this region enemy country under the conclusive decision of the political power of this Government, proclaimed in the President's proclamation of March 31, 1863, revoking former exception of places and districts occupied by Union forces, and fixing upon Louisiana by name, and its inhabitants, expressly, insurrectionary and hostile character, as against the United States, with the sole and single exception of the *port* of New Orleans, which proclamation, so conclusive of this question, was in full force on the day of this capture; and also in view of the "Abandoned and Captured Property Act of March 12, 1863," and the Treasury Regulations issued in pursuance of it under date of 3d July and 11th September, 1863, and the appended orders of the War and Navy Departments to the army and navy to carry the same into effect, with exception of property captured as lawful prize by the navy, such captured property being regarded and described as at that time and up to the time of this capture and afterwards "lawful maritime prize by the naval forces of the United States;" which legislative and executive action was then applicable and applied

to the region of Louisiana in question, as enemy country, and was in full force on the day of this capture. See also statute, 1864, chap. 225.

SIXTH POINT.

The enemy character of that country at the time of this capture is, upon all the views stated, and authorities cited, in our judgment, the controlling fact in this cause; and we find it to have been then established in the concurring action and duly declared determination of the legislative, executive and judicial departments of this Government; and of all public authority *de facto* or *de jure*, rebel or legitimate, then having, or claiming to have, right in law or force in fact, to fix and declare the legal or actual character of that country; and we respectfully conclude that the decree of the court below should be reversed, and the property claimed, be condemned as prize of war.

JAMES SPEED,
Attorney General.
CHARLES EAMES,
Counsel for Captors.

APPENDIX.

OFFICE OF UNITED STATES ATTORNEY,
DISTRICT OF MASSACHUSETTS,
BOSTON, *Oct.* 7, 1864.

MY DEAR SIR: I take much pleasure in enclosing to you a report of the decision of Judge Sprague in the case of six hundred and eighty pieces of merchandise. It is the only one in which he has been required to pronounce upon the admiralty jurisdiction over naval captures on land.

Yours truly,

RICHARD H. DANA, JR.

CHARLES EAMES, Esq.

UNITED STATES DISTRICT COURT.

Six hundred and eighty pieces of Merchandise—Prize.

These articles of merchandise were ferried across the Chowan river in North Carolina, at Reddick's Ferry, and landed on a wharf, preparatory to their being taken to Weldon. They were not contraband of war, but were the property of an inhabitant of the country under the rebel government, who, the evidence showed, was himself actually a rebel. The Chowan river was at the time occupied by a naval force of the United States for blockading and all other purposes of war. The goods were captured soon after they were landed, by a force sent for the purpose from the United States steamer Hunchback, under Lieut. Colhoun. Being found in a damaged condition, the property was sold after an appraisement by order of the commander of the squadron, and the proceeds sent to the Assistant Treasurer at Boston, to await adjudication. There were no claims interposed. It was libelled as prize, and the only question was of admiralty jurisdiction.

R. H. Dana, Jr., for the United States and captors. The court of admiralty in England has always taken cognizance of captures made by the forces of the admiralty, (i. e. the naval forces) whether the property at the time of its capture was actually water-borne or on land, and whether the capture was made by the naval forces alone, or in conjunction with the land forces. (Lord Mansfield's opinion in *Lindo* vs. *Rodney*, Dougl., 613, *Key* vs. *Pearse*, note to Le Caux *vs.* Eden, Dougl., 606, *The captures at Genoa*, 4 Rob., 388, *The army of the Deccan*, 2 Knapp, P. C., 152, and note, *The captures at the Cape of Good Hope*, 2 Rob., 274, *The capture of Thorshaven*, Edw., 102, *The Rebeckah*, 1 Rob., 277, *The Stella and Nute*, 5 Rob., 311, *The captures at Trinidad*, 5 Rob., 85). This view of the subject has the sanction of the highest authorities in the United States, (Marshall, C. J., in *Jennings* vs. *Carson*, 4 Cr., 20, Judge Peters's decision, Note to 4 Cr., p. 5, *The Emulous*, 1 Gall., 563, Story, J., in *Brown* vs. *United States*, 8 Cr., 137.) The distinction is that captures made by naval forces, in that capacity, under the direction of naval or admiralty authorities, are *prize*, within the meaning of the law, whether made on land or at sea, and are passed upon by the court of the admiralty, on principles of international law, while property taken by land forces is booty, and governed by different rules. The Federal courts of the United States, as courts of admiralty, have jurisdiction over the whole subject of prize, as extensive as that of the court of admiralty in England. (*The Betsy*, 3 Dall., 6, *Talbot* vs. *Janson*, 3 Dall., 133, *Jennings* vs. *Carson*, 4 Cr., 2, *The Alerta*, 9 Cr., 359, *Penhallow* vs. *Doane*, 3 Dall., 54, *The Amiable Nancy*, 1 Paine, 111, *The Emulous*, 1 Gall., 563, Story's App. to 2 Wheat., 1.) The act of 1861, ch. 60, specially recognizes the jurisdiction of this court over all classes of prize.

Sprague, J.—The evidence leaves no doubt that this is property of the enemy. The only question is whether this court has jurisdiction over it as prize in admiralty. It seems to be settled that the district courts of the United States possess all the prize jurisdiction of a court of admiralty. Such is the construction given by the authorities to the statutes and the clause in the Constitution conferring jurisdiction on the Federal courts, and such has been the practice. The authorities cited show that the jurisdiction of the admiralty over matters of prize certainly extended far enough to cover the circumstances of this case. How much farther it may have extended, it is not necessary to consider. Here the merchandise, being enemy's property, was ferried across a river occupied by our naval forces for all purposes of war, acting under strictly naval

authority, and it was soon afterwards seized on the wharf by a naval force sent from one of our vessels for the purpose. It is not necessary to decide whether this property might not be liable to municipal confiscation or forfeiture on the instance side of this court, under any of the special statutes passed to meet this rebellion. It is not proceeded against as forfeited or confiscate, but for condemnation as prize of war, and I am satisfied that the admiralty jurisdiction of this court is sufficient to embrace the case.

EXTRACT FROM ANNUAL REPORT OF THE SECRETARY OF THE NAVY, 5TH DECEMBER, 1864.

MISSISSIPPI SQUADRON.

The most extensive operations of the Mississippi squadron during the year have been in connection with the military expedition on the Red river, which, with the attending incidents, form an interesting page in the annals of the war. The failure of this conjoint expedition to accomplish the important results desired and anticipated are attributable to causes beyond human control, and to the want of success on the part of the military arm of the service So far as the navy was concerned, the expedition was chiefly one of co-operation with the army. It possessed, however, within itself the elements of success under ordinary circumstances, and had not natural obstacles intervened, its history might have been not less brilliant than the record of other achievements of this squadron.

On the 7th of March Rear-Admiral Porter had assembled at the mouth of Red river a formidable fleet of iron clad vessels and of light-draught wooden boats for co-operation with the army, and was there joined by a portion of Major General Sherman's force in transports, under the command of General A. J. Smith.

The joint forces moved up the river on the 12th of March to form a junction with Major General Banks at Alexandria. In their progress some of the vessels branched off into the Atchafalaya, while the main portion continued up Red river. The Rebels were driven in turn from Simmsport and Fort DeRussy, the latter falling again into our possession, with its guns and munitions of war and a few prisoners. Some of the fleetest vessels were despatched to Alexandria with the hope of cutting off the rebels in their retreat, but without success. That place was occupied by our forces, and about the first of April both army and navy commenced to move up the river towards Shreveport. A part only of the naval force could proceed further, up the river than Alexandria, and it was with difficulty they reached that

point. But the assistance of the gunboats was so essential to success that some risks had to be taken, and extraordinary exertions were made to pass the vessels over the falls so as to give the required co-operation. Main force had to be used to haul the gunboats. But Grand Ecore was reached without accident, and occupied without opposition. There were at this time indications of the usual rise of the season in the river, and everything promised success. Twenty-three heavy guns had been captured from the rebels since the entry into that river. Springfield landing was designated as the point for the next junction of the co-operating forces, and it was reached at the appointed time, three days after leaving Ecore, by six gunboats and twenty heavy transports. Here they learned that the army under General Banks had met a reverse, and was falling back to Pleasant Hill, some distance below. Rear-Admiral Porter was therefore compelled to turn back, with the full knowledge that in retracing his steps he would be interrupted at every assailable point. The rebels, flushed with their success against the army, availed themselves of every opportunity which offered for harassing the gunboats and transports.

Their cavalry and artillery, taking advantage of the winding stream, moved rapidly from point to point, attacking on every available occasion. But the gunboats successfully fought their way, and from time to time repelled their assailants with terrible slaughter.

On the 14th of April Rear-Admiral Porter got back to Grand Ecore, where he found the vessels which he had left at that point still detained above the bar. The river, instead of rising as customary at this season, had fallen during his absence. The army was preparing to move back upon Alexandria; the water having so receded there was little hope of getting the vessels out, and destruction apparently awaited the best portion of the squadron. But, in the words of the Admiral, "Providence provided a man for the occasion." Lieutenant Colonel Joseph Bailey, acting engineer of the 19th army corps, an intelligent and efficient officer, devised a plan for the construction of a series of dams across the rocks at the falls, thus by artificial means to supply that which nature withheld—a sufficient depth of water for the passage of the vessels. Extraordinary as was the project, and received with incredulity, the mind that conceived it was enabled to carry it into successful execution. Men were set to work; wood-cutters collected; quarries opened; and, after some weeks, the undertaking was accomplished. The dams were built, the vessels passed safely over the falls to the delight of the assembled army and navy who had mutually participated in the work, and on the 16th of May Rear-Admiral Porter had the satisfaction of announcing that the fleet was relieved from danger. There is probably in naval history no other instance of such peril and difficulty so successfully and skilfully surmounted. * * *

Interesting details of this and minor expeditions in the Washita, Arkansas, Black, and Yazoo rivers, will be found in the official appendix to this report.

EXTRACTS FROM OFFICIAL REPORTS.

RED RIVER EXPEDITION.

Co-operation with the army under Major General Banks.

MISSISSIPPI SQUADRON, FLAG-SHIP BLACK HAWK,
Off Red River, March 2, 1864.

SIR: I came down here anticipating a move on the part of the army up towards Shreveport; but as the river is lower than it has been known to be for years, I much fear that the combined movement cannot come off without interfering with plans formed by General Grant.

General Sherman has gone to New Orleans to make arrangements with General Banks, and I am expecting his return every day. In the mean time the gunboats are up the Atchafalaya and Black rivers, destroying bridges and stores, and endeavoring to destroy 8,000 cattle collected at Sicily island.

The Mississippi river is very quiet, and the rebels retreated into the interior on hearing of the advance of the gunboats.

I am, sir, very respectfully, your obedient servant,

DAVID D. PORTER, *Rear-Admiral.*

Hon. GIDEON WELLES,
Secretary of the Navy, Washington, D. C.

CAPTURE OF SIMMSPORT AND FORT DE RUSSY.

Report of Rear-Admiral D. D. Porter.

MISSISSIPPI SQUADRON, FLAG-SHIP BLACK HAWK,
Fort DeRussy, Red River, March 15, 1864.

SIR: I had the honor to report to you that I was about to ascend Red river with a fleet of gunboats, in company with a portion of General Sherman's command, or that of General Banks, whichever concluded to go.

On the 7th of March I had assembled at the mouth of Red river a large fleet of iron-clads, composed of the following vessels:

Essex, Commander Robert Townsend.
Benton, Lieutenant Commander James A. Greer.
Lafayette, Lieutenant Commander J. P. Foster.
Choctaw, Lieutenant Commander F. M. Ramsey.
Chillicothe, Acting Volunteer Lieutenant S. P. Couthouy.
Ozark, Acting Volunteer Lieutenant George W. Browne.
Louisville, Lieutenant Commander E. K. Owen.
Carondelet, Lieutenant Commander J. G. Mitchell.
Eastport, Lieutenant Commander S. L. Phelps.
Pittsburg, Acting Volunteer Lieutenant W. R. Hoel.

Mound City, Acting Volunteer Lieutenant A. R. Langthorne.
Osage, Lieutenant Commander T. O. Selfridge.
Neosho, Acting Volunteer Lieutenant Samuel Howard.
Ouachita, Lieutenant Commander Byron Wilson.
Fort Hindman, Acting Volunteer Lieutenant John Pearce.

And the lighter boats:

Lexington, Lieutenant George M. Bache.
Cricket, Acting Master H. H. Gorringe.
Gazelle, Acting Master Charles Thatcher.
Black Hawk, Lieutenant Commander K. R. Breese.

I received communications from General Banks informing me that he would be in Alexandria on the 17th March, and I made my dispositions to meet him there. On the 11th instant, part of General Sherman's command, ten thousand men, under the command of Brigadier General A. J. Smith, joined me in transports at the mouth of Red river, and next morning early the gunboats started up the river, followed by the transports. There was just sufficient water to allow the larger boats to pass. By previous arrangement, Lieutenant Commander Phelps, in the Eastport, was ordered to push on up with his vessel and those that could keep with him, and clear away the heavy obstructions the rebels had placed in the river, and to amuse the fort until the army could land at Simmsport, and get into the rear of the enemy's works, which could be done by making a march of thirty miles.

The Benton, Pittsburg, Chillicothe, Louisville, Mound City, Carondelet Ouachita, Lexington, and Gazelle turned off to the left into the Atchafalaya, followed by the troops, while the others went on up the river. The gunboats arrived at Simmsport about twelve o'clock, and found the enemy posted in force about three miles back. The Benton landed her crew and drove in the pickets. The army came along in about half an hour more and landed the next morning, taking possession of the enemy's camping ground, the latter retreating towards Fort De Russy. That night General Smith concluded to follow them by land, while I proceeded up Red river with all the gunboats and transports. In the mean time the Eastport had reached the obstructions, and, with the vessels that kept pace with her, had commenced the work of demolition on the formidable barricade, on which the rebels had been employed five months. They supposed it impassable, but our energetic sailors, with hard work, opened a passage in a few hours. The obstructions consisted of heavy piles driven into the mud, and braced in every direction; they were also clamped together with heavy iron plates and chains.

The Eastport and Neosho got through about four o'clock in the afternoon, and proceeded up to the fort, which at that moment was being surrounded by the troops under General Smith, who had marched from Simmsport since daylight. A brisk musketry fire was going on between the rebels and our troops, and they were so close together it was difficult to distinguish the combatants. The Eastport opened her batteries, but, fearing to injure our own men, ceased firing, when our troops proceeded to the assault and carried the place. In a

few moments, and with small loss, two hundred and fifty prisoners, eight heavy guns, and two field pieces fell into our hands, and all the munitions of war.

The main body of the enemy, 5,000 strong, under the rebel General Walker, made their escape. They left the fort, it was said, to give battle to our troops, and left a garrison of 300 men to defend it. Our army came in by a different road from what they expected and made short work of them. Among the guns captured was one of the Indianola's 9-inch and one belonging to the Harriet Lane. The rest of the guns were 24 and 32 pounders and one 160-pounder rifle.

As soon as the fort was in possession of the troops I sent off up the river the fleetest gunboats I had, to cut the enemy off, if possible, or harass them until our troops could be placed on the transports. By sunset the transports will be in Alexandria and ahead of the rebels, and I hope the latter will be cut off.

These works have been made much more formidable than they were last year, and the loss of guns must be severely felt by the rebels, as they have only 15 more heavy ones in this section of the country. The whole affair has been well managed; the troops made a splendid march and attack, and the officers in command of the gunboats and transports have shown great zeal and industry in getting up the river, and through the obstructions, which the rebels deemed impassable.

I forgot to mention in my last report that in the recent attack on Trinity by the gunboats, a number of negroes were recaptured who were captured by the enemy in a recent attack upon Goodrich's landing.

I enclose herewith a list of the guns captured at Fort De Russey, with their numbers, as some of them appear to be heavy guns. The Ordnance bureau may be able to account for them.

I am, very respectfully, your obedient servant,

DAVID D. PORTER, *Rear-Admiral.*

Hon. GIDEON WELLES,
Secretary of the Navy, Washington, D. C.

MOVEMENT UPON ALEXANDRIA—AFFAIRS IN THAT PLACE.

Report of Rear-Admiral D. D. Porter, Mississippi Squadron.

FLAG-SHIP BLACK HAWK,
Off Alexandria, La., March 16, 1864.

SIR: I have the honor to inform you that I arrived at this place this afternoon. As soon as the forts were surrendered, I pushed on the fastest vessels, Ouachita and Lexington, followed by the Eastport, to Alexandria. The Ouachita arrived here as the last of a fleet of transports passed over the falls. The rebels set fire to a large ferry-boat, and one of the boats grounding on

the falls was also burnt to prevent her falling into our hands. As no reliable pilot could be procured to take our boats across the falls, the transports will have to escape for the present, but are sure to be captured or destroyed before the month is over. The surrender of the forts at Point De Russy is of much more importance than I at first supposed. The rebels had depended on that point to stop *any advance* of army or navy into this part of rebeldom. Large quantities of ammunition, best engineers, and best troops were sent there, and in two or three months more it would have been a most formidable place. As it was, it was not complete, (though the guns were in position,) and would have stood a very poor chance if attacked in force. The works have been laid out by a Colonel De Russy, and are of the most extensive and formidable kind.

* * * * *

General Smith has left a good force at the forts (and I left the Benton and Essex) to destroy them effectually, which will be some labor. We have seven or eight thousand troops in this city, and are expecting to hear soon of General Banks's arrival. He has been delayed by storms, which have made the roads heavy.

The force that left the forts with a party under General Polignac from Harrisonburg have gone out to meet General Banks, who will soon dispose of them, and the chances are that, when all our cavalry now approaching with General Banks get after them, the rebels will be captured or scattered, not to unite again for some time.

I am, very respectfully, your obedient servant,

DAVID D. PORTER, *Rear-Admiral.*

Hon. GIDEON WELLES,
Secretary of the Navy, Washington, D. C.

P. S.—I beg leave to mention, as a proof of the rapidity with which this portion of General Sherman's command, under Brigadier General A. J. Smith, did their work, they marched twenty-eight miles, starting at daylight; built a bridge which cost them over two hours' hard work; had a sharp skirmishing and artillery attack of two hours, and had possession of the forts, all intact, before sunset.

It is one of the best military moves made this war.

I beg leave to enclose copy of Lieutenant Commander S. L. Phelps's report.

Very respectfully, your obedient servant,

DAVID D. PORTER, *Rear-Admiral.*

Occupation of Grand Ecore—Movements towards Shreveport—Return to Grand Ecore.

FLAG-SHIP CRICKET, MISSISSIPPI SQUADRON,
Off Grand Ecore, Louisiana, April 14, 1864.

SIR: I had the honor of reporting to you the movements of the squadron as far as Alexandria, and the intention of General Banks to move on at once to Shreveport. He deemed the co-operation of the gunboats so essential to

success that I had to run some risks and make unusual exertions to get them over the falls.

The army started on the appointed day, and I pushed up the gunboats to cover them, if they should be needed, as fast as they got over the falls. The vessels arrived at Grand Ecore without accident, and had good water, the river apparently about to reach its usual stage at this season. The Cricket, Eastport, Mound City, Chillicothe, Carondelet, Pittsburg, Ozark, Neosho, Osage, Lexington and Fort Hindman, Louisville and Pittsburg, were the vessels sent up, and a fleet of 30 transports followed them.

Grand Ecore was occupied by our forces without opposition. The works deserted. Lieutenant Commander Phelps captured one 32-pounder on the river, below Grand Ecore, which he destroyed, making 22 guns captured from the enemy since we entered the river.

The army had arrived at Natchitoches, near Grand Ecore, when I got up here, and was preparing for an immediate march. As the river was rising very slowly, I would not risk the larger vessels by taking them higher up, but started on the 7th of April for Shreveport with the Cricket, Fort Hindman, Lexington, Osage, Neosho, and Chillicothe, with the hope of getting the rest of the vessels along when the usual rise came. Twenty transports were sent along, filled with army stores, and with a portion of General A. J. Smith's division on board. It was intended that the fleet should reach Springfield landing on the third day, and then communicate with the army, a portion of which expected to be at Springfield at that time. I found the difficulties of navigation very great, but we reached the point specified within an hour of the time appointed. At this point we were brought to a stop; the enemy had sunk a very large steamer (the New Falls City) right across the river, her ends resting on each bank, and her hull, broken in the middle, resting on the bottom. This was a serious obstruction, but I went to work to remove it. Before I commenced operations, however, a courier came in from General Banks, bringing the unpleasant and most unexpected news, "Our army has met with a reverse," and was falling back to Pleasant Hill, some sixty miles in our rear. Orders also came to General A. J. Smith to return to Grand Ecore with the transports and the troops he had with him. Here was an end to our expedition for the present, and we reluctantly turned back, after having nearly reached the object we were aiming at. The information we received was of a very unsatisfactory kind, and we did not know really what was the exact state of affairs, no letters having been sent by post courier.

It would be very difficult to describe the return passage of the fleet through this narrow and snaggy river. As long as our army could advance triumphantly it was not so bad; but we had every reason to suppose that our return would be interrupted in every way and at every point by the enemy's land forces, and we were not disappointed. They commenced on us from high banks, at a place called Coushatta, and kept up a fire of musketry whenever an opportunity was offered them. By a proper distribution of the gunboats, I had no trouble in driving them away, though from the high banks they could

fire on our decks almost with impunity. As we proceeded down the river, they increased in numbers, and as we only made thirty miles a day, they could cross from point to point and be ready to meet us on our arrival below. On the left bank of the river a man by the name of Harrison, with 1,900 cavalry and four or five pieces of artillery, was appointed to follow us down and annoy us. It was very fortunate for us that this person and his command were lately severely handled by a gunboat, (a few weeks ago,) which made them careful about coming within range. On the evening of the 12th instant, we were attacked from the right bank of the river by a detachment of men of quite another character. They were a part of the army which two or three days previous had gained success over our army, and flushed with victory, or under the excitement of liquor, they appeared suddenly upon the right bank and fearlessly opened fire on the Osage, Lieutenant Commander T. O. Selfridge, (iron-clad,) she being hard aground at the time with a transport (the Black Hawk) alongside of her, towing her off. The rebels opened with two thousand muskets, and soon drove every one out of the Black Hawk to the safe casemates of the monitor. Lieutenant Bache had just come from his vessel, (the Lexington,) and fortunately was enabled to pull up to her again, keeping close under the bank, while the Osage opened a destructive fire on these poor deluded wretches, who, maddened with liquor and led on by their officers, were vainly attempting to capture an iron vessel. I am told that their hootings and actions baffle description. Force after force seemed to be brought up to the edge of the bank, where they confronted the guns of the iron vessel, only to be cut down by grape-shot and canister. In the mean time, Lieutenant Bache had reached his vessel, and, widening the distance between him and the Osage, he opened a cross-fire on the infuriated rebels, who fought with such desperation and courage against certain destruction, that it could only be accounted for in one way. Our opinions were verified on inspection of some of the bodies of the slain—the men actually smelling of Louisiana rum! This affair lasted nearly two hours before the rebels fled. They brought up two pieces of artillery, one of which was quickly knocked over by the Lexington's guns, the other they managed to carry off. The cross-fire of the Lexington finally decided this curious affair of a fight between infantry and gunboats. The rebels were mowed down by her canister, and finally retreated in as quick haste as they had come to the attack, leaving the space of a mile covered with dead and wounded, muskets and knapsacks. A dying rebel informed our men that Gen. Greene had his head blown off, which I do not vouch for as true. If true, it is a serious loss to the rebels. Night coming on, we had no means of ascertaining the damage done to the rebels. We were troubled no more from the right bank of the river, and a party of 5,000 men who were marching to cut us off were persuaded to change their mind after hearing of the unfortunate termination to the first expedition. That same night I ordered the transports to proceed on, having placed the gunboats at a point where the rebels had a battery. All the transports were passed safely, the rebels not firing a shot in return to the many that were bursting over the hills. The next morning, the

13th instant, I followed down myself, and finding at Compte, six miles from Grand Ecore by land, that they had got aground, and would be some time getting through, I proceeded down in this vessel to Grand Ecore, and got General Banks to send up troops enough to keep the guerrillas away from the river. * * * * * * * * * * * *

I found the fleet at Grand Ecore somewhat in an unpleasant situation—two of them being above the bar, and not likely to get away again this season, unless there is a rise of a foot. I could not provide against this when over a hundred miles up the river. If nature does not change her laws, there will no doubt be a rise of water; but there was one year, 1846, when there was no rise in the Red river, and it may happen again. The rebels are cutting off the supply by diverting different sources of water into other channels; all of which would have been stopped, had our army arrived as far as Shreveport. I have done my best (and so have the officers and men under my command) to make this expedition a success throughout, and do not know that we have failed in anything we have undertaken. Had we not heard of the retreat of the army, I should still have gone on to the end. A wise Providence, which rules and directs all things, has thought proper to stay our progress and throw impediments in the way, for some good reason. * * *

I have the honor to be, very respectfully, your obedient servant,

DAVID D. PORTER, *Rear-Admiral.*

Hon. GIDEON WELLES,
Secretary of the Navy, Washington, D. C.

PASSAGE OF THE FALLS BY THE FLEET.

Report of Rear Admiral D. D. Porter.

FLAG-SHIP BLACK HAWK, MISSISSIPPI SQUADRON,
Mouth of Red River, May 16, 1864.

SIR: I have the honor to inform you that the vessels lately caught by low water above the falls at Alexandria have been released from their unpleasant position. The water had fallen so low that I had no hope or expectation of getting the vessels out this season, and as the army had made arrangements to evacuate the country, I saw nothing before me but the destruction of the best part of the Mississippi squadron. * * *

I feel very much for the poor fellows who fell into the rebels' hands, as the latter have been very merciless to some of the prisoners they have taken, and committed outrages at which humanity shudders.

The vessels will all return to their stations in a few days, as there is no prospect, under present circumstances, of renewing operations in this part of Louisiana, the season having passed for operating with any chance of success.

I am sorry to see that the rebel guerrillas have become quite troublesome on the Mississippi since I left, all of which will be rectified within the coming week.

I have the honor to be, very respectfully, your obedient servant,

DAVID D. PORTER, *Rear Admiral.*

Hon. GIDEON WELLES,
Secretary of the Navy, Washington, D. C.

Congratulatory Letter to Rear-Admiral D. D. Porter.

NAVY DEPARTMENT,
May 31, 1864.

SIR: The department acknowledges the receipt of your interesting report of the 16th instant, giving a detailed and graphic account of the rescue of the Mississippi squadron from its perilous position above the falls at Alexandria, Red river, and of the aid which you received through the indomitable perseverance and engineering skill of Lieutenant Colonel Bailey, acting military engineer of the 19th army corps.

It is with no ordinary feelings of pleasure that the department learns of the safe passage of that valuable squadron, threatened as it was with inevitable capture or destruction, and congratulate you and your command that the fleet which had borne such a conspicuous part in many of the great events of the war has been spared to the country for future usefulness and renown.

You will tender the thanks of the department to the officers and men of the army for the cheerful aid given you in this great emergency, without which the squadron would unavoidably have fallen into the hands of the rebels or been destroyed. While regretting the loss of the steamers Signal and Covington, and lamenting for the brave men who fell in the engagement with the enemy, the department takes great pleasure in expressing its admiration of the gallant manner in which those vessels were defended, and has reason to believe that the officers and men did their whole duty nobly and faithfully.

Very respectfully,

GIDEON WELLES,
Secretary of the Navy.

Rear-Admiral D. D. PORTER,
Commanding Mississippi Squadron, Cairo, Illinois.

Assistance Rendered the Army.

FLAG-SHIP BLACK HAWK, MISSISSIPPI SQUADRON,
Off Cairo, Illinois, May 26, 1864.

SIR: I have the honor to report my arrival at this place, four days from Red river. The army had all crossed the Atchafalaya, and General Smith's division had embarked; the gunboats covered the army until all were over. Gen.

Smith, who brought up the rear, turned upon the rebels with a part of his command, under General Mower, killed and wounded a number, captured 180 prisoners and two field-pieces. This makes eight or nine field-pieces captured by General Smith, besides the guns captured at Fort De Russey, in all of which captures General Mower bore a conspicuous part. It is just such men we want to lead our soldiers.

The river is quiet between this and Red river. The rebels had a battery on the banks below Tunica bend, but the gunboats drove it away after a short action.

I am, sir, very respectfully, your obedient servant,

DAVID D. PORTER, *Rear-Admiral.*

Hon. GIDEON WELLES,
Secretary of the Navy, Washington, D. C.

YAZOO EXPEDITION.

Letter from Rear-Admiral Porter, transmitting additional report of Lieutenant Commander E. K. Owen.

FLAG-SHIP BLACK HAWK, MISSISSIPPI SQUADRON,
Red River, March 6, 1864.

SIR: I have the honor to enclose herewith copy of report from Lieutenant Commander E. K. Owen, in relation to movements up the Yazoo river.

I am, sir, very respectfully, your obedient servant,

DAVID D. PORTER, *Rear-Admiral.*

Hon. GIDEON WELLES,
Secretary of the Navy, Washington, D. C.

Additional report of Lieutenant Commander E. K. Owen.

UNITED STATES STEAMER MARMORA,
Off Greenwood, Mississippi, February 15, 1864.

SIR: I have the honor to report the arrival of the expedition at this place on last evening. We met with no opposition excepting a smart skirmish at the edge of the woods a mile back of this place, between the rebel cavalry under Forrest and our own under Colonel Osband. We had two wounded. The enemy had fallen back to Grenada, and are fortifying that place. If the way is tolerably clear, and the force not too heavy, our cavalry force (250) and a portion of the infantry (500) will go out in the morning. If we find the enemy too strong we will go down the river, as the Tallahatchie and Yallabusha are entirely too low to ascend. This river is also falling rapidly, with only eight feet in the channel above Honey island. I shall take care that no boats shall get caught. The Star of the West is still in the channel

in the Tallahatchie, with her wheels and upper works out. Fort Pemberton is entirely destroyed, as also all the cotton out of which it was built. We have succeeded so far in gathering about four hundred and fifty bales of cotton, of which eighty are on the gunboats and the rest on the transports. Fifty-three bales are all of the C. S. A. that have been captured, though but very little of any is marked at all. When we leave here it will be to go up the Little Schula as far as the town of that name. Then we go down the river, fill up with coal, and ascend the Sunflower.

There has been no Union sentiment of any moment or value expressed since our advent into these waters. On the Sunflower, however, we have reason to believe it is prominent. This is an insignificant place, containing about forty houses of all kinds, and entirely of frame buildings. The inhabitants have mostly fled, leaving a few poor Irish. It is a rendezvous for dry-goods merchants, who obtain large supplies from Memphis *via* Friar's Point. We have met with no young men as yet, all having been forced into the army. The last military order of the rebels is to remove or shoot all the negroes between the ages of forty-five and sixteen. Some few negroes have already been shot by the rebel scouts.

I have been up the Tallahatchie as far as where the Star of the West is sunk, which is directly opposite the Fort, (Pemberton.) At the mouth of the Yallabusha the Ed. J. Gay is sunk, the decks being just above water. About one mile below, the Arcadia is sunk, with her upper works out and nearly filling the river at this stage of water. We found great difficulty in turning and coming down, the light upper works suffering to some extent. The rebel steamer Sharpe was burnt a few days ago in the Yallabusha, to prevent her falling into our hands. As the river is falling quite rapidly, and with thirteen boats in the fleet, I think I shall drop down below the bars.

I am, sir, very respectfully, your obedient servant,

E. K. OWEN,
Lieutenant Commanding 5th District.

Rear-Admiral D. D. PORTER,
Commanding Mississippi Squadron.

EXPEDITION UP THE BLACK AND WASHITA RIVERS.

Report of Rear-Admiral D. D. Porter.

FLAG-SHIP BLACK HAWK, MISSISSIPPI SQUADRON,
Red River, March 6, 1864.

SIR: I have the honor to report that I sent an expedition up the Black and Washita rivers on the 1st instant, under command of Lieutenant Commander F. M. Ramsay. The following vessels composed the expedition: Ouachita, Lieutenant Commander Byron Wilson; Fort Hindman, Acting Volunteer Lieutenant George M. Bache; Conestoga, Lieutenant Commander Thomas O. Selfridge; Cricket, Acting Master H. H. Gorringe.

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The expedition was perfectly successful. The rebels, about two thousand strong, under General Polignac, were driven from point to point, some extensive works captured, and three heavy 32-pounders brought away. The works were destroyed. The enemy suffered severely from our guns, and the vessels brought away all the cotton they could find. They also destroyed a pontoon bridge, cutting the rebels off from their main body, at or near Alexandria, but having no force to put on shore, they had time to escape.

The water falling very rapidly forced the expedition to give up the intended trip further into the interior. Some houses were necessarily destroyed, but as the community is all rebel it is not to be regretted.

I regret to say that we lost two killed and fourteen wounded, and the Fort Hindman was badly cut up with shot and shell, being struck 27 times, but nothing to impair her efficiency.

I enclose Lieutenant Commander Ramsay's report. I am well pleased with the result of the expedition.

I am, sir, very respectfully, your obedient servant,

DAVID D. PORTER, *Rear-Admiral.*

Hon. GIDEON WELLES,

Secretary of the Navy, Washington, D. C.

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SUPPLEMENT

TO

R. M. CORWINE'S ARGUMENT

IN CASE NO. 360,

UNITED STATES

VS.

SEVENTY-TWO BALES OF COTTON,

ELIZABETH ALEXANDER, CLAIMANT.

With the indulgence of the Court, I take leave, most respectfully, to submit the following additional views in this case. Having had no opportunity to see and consider the brief of the law officers of the Government before I had put my own into the hands of the printer, I have prepared this supplement as the result of my examination and reflections since seeing their brief, and hearing counsel at bar. If I have erred in this, I hope that it will be attributed to my zeal in the cause rather than a want of proper respect to the court and its rules.

WASHINGTON, D. C., *February* 27, 1865.

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The order of the President, assigning Gen. Banks to the command of the Department of the Gulf, places all Red river expeditions, land and naval, under that General. The language is: "This river (the Mississippi) being opened, the question arises how the troops and the naval forces there can be employed to the best advantage. Two objects are suggested as worthy of *your* attention. First: On the capture of Vicksburg, to send a military force directly east to destroy the railroad at Jackson and Marion, (meaning doubtless *Meridian*,) and thus cut off all connection by rail between Northern Mississippi and Mobile and Atlanta. The latter place is now the chief military depot of the rebel army in the West. Second: *To ascend with a naval and military force* the Red river, as far as it is navigable, and thus open an outlet for the sugar and cotton of Northern Louisiana. Perhaps both of these objects may be accomplished if the circumstances should be favorable." A previous part of the order says: "The President regards the opening of the Mississippi as the first and most important of all our *military* and *naval* operations, and it is hoped that YOU will not lose a moment in accomplishing it."

The attention of the court is most respectfully directed to the words that are emphasized, with the view of determining the value of the proposition herein insisted upon, viz: that this entire military and naval expedition was placed under the sole and exclusive command of Gen. Banks. This view is further strengthened by the language employed by Admiral Porter in his dispatches to the Secretary of the Navy. On page 20 of the brief of the Attorney General occurs this language: "I received *communications* from General Banks, *informing* me that he would be in Alexandria on the 17th March, and I made my disposition to meet him there." This information was, I have no doubt, an *order* covered by the communication. However that may be, it is obvious that the Admiral entered Red river when he was ordered to do so by General Banks, and thus came within the influence of his command, and became a part of the "military and naval force" with which that General was ordered to ascend Red river.

Again: at the bottom of the 22d page of the same brief occurs this language: "*He* (meaning General Banks) deemed

the co-operation of the gunboats so essential to success that I had to run some risks and make unusual exertions to get them over the falls."

Thus, the naval forces had to look for orders to General Banks, and any movement made by them without orders from him was illegal. Those forces were an arm of his army, intended to do such things and perform such services as were in pursuance with the general plan of the chief commander of the expedition, and to obey his orders. Any movements made without such orders were void, and contrary to the rules of military discipline.

THE ARMY CAPTURED THE RED RIVER COUNTRY.

There is no room to doubt that the army under General Banks wrested the Red river country from the control of the enemy. As we have seen, the Printed Record is full to this point. But Admiral Porter may be called to the witness stand. He says: "On the 11th instant, (March,) part of General Sherman's command, ten thousand men, under the command of Brigadier General A. J. Smith, *joined me in transports* at the mouth of Red river, and next morning early the gunboats started up the river, followed by transports." (Attorney General's Brief, page 20.) After stating that the army could get in rear of the rebels at Fort DeRussey by making a flank march of thirty miles, and that they did make the movement, he says, (same brief, page 20:) "The Eastport and the Neosho got through about four o'clock in the afternoon, and proceeded up to the fort, which, at that moment, was being surrounded by the troops under General Smith, who had marched from Simmsport since daylight. A brisk musketry fire was going on between the rebels and our troops, and they were so close together it was difficult to distinguish the combatants. The Eastport opened her batteries, but, fearing to injure our men, ceased firing, *when our troops proceeded to the assault and carried the place.*"

Again, on page 22 of the same brief, he says: "The surrender of the fort at Point DeRussey is of much more importance than I at first supposed. The rebels had depended on that point to stop any advance of our army or navy into this part of rebeldom."

Again, on page 23, he says: "The army started on the appointed day, and I pushed up the gunboats to cover them,

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if they should be needed, as fast as they got over the falls." * * * "The army had arrived at Natchitoches, near Grand Ecore, when I got up here, and was preparing for an immediate march."

JUSTICE CATRON'S AND DISTRICT JUDGE TRIGG'S OPINIONS, CITED BY ME IN THE ARGUMENT AT BAR.

1st. The United States *vs.* Sixty-nine Bales of Cotton, in the district court of the United States at Nashville, Tennessee.

This was a proceeding to *forfeit* this cotton, under the provisions of the act of Congress of the 17th July, 1862, and the libel charged that the cotton was purchased by the claimant from a citizen of the State of Alabama, who was at the time of the purchase, and was then, engaged in aiding, abetting, and promoting the insurrection, and who did not, within sixty days after the President's proclamation, return to his allegiance to the United States; and that the claimant purchased the cotton well knowing the premises. The claimant admitted that the cotton was grown within the rebel lines and was owned by one who was within those lines, but he denies that he had notice that the title to the cotton was not valid and that he had notice of the President's proclamation aforesaid. He averred that he had written permission from Major General Logan, of our army, to remove the cotton into our lines and to Nashville, where it was seized by the Treasury authorities.

The court decided that the act of Congress of 17th July, 1862, was constitutional; that it is binding alike on *all* citizens of the United States, as well those within the Confederate lines as those within our own lines. The Judge makes a clear distinction between the case of Castin, 4 Wheaton, 247, relied upon by the law officer of the Government, and the case then under consideration. Castine was at the time within the control and was held independently of the United States by a recognized foreign Government, possessing all the attributes of an independent Government—whereas the owner of this cotton was at the time, and still is, a citizen of the United States, but in rebellion to its laws, but still owing allegiance to them and to none other. Until the so-called Confederate States are recognized by our Government as an independent Government, the citizens residing there are citizens of the United States, bound to obey its laws and entitled to all the benefits and protection of those laws.

Their obligations and their rights as such remain the same. Any other view would be a recognition of the doctrine of secession. The case went off on the proposition that the notice provided for in that act, relative to the President's proclamation, was not such as to affect the rights of the loyal claimant to this property, and it was awarded to him accordingly. See the Nashville *Daily Times* of July 7, 1864, where the opinion is published in full.

2d. In the second place Justice Catron, of this Court, and Judge Trigg, of said district court, in the case of the United States *vs.* the *Republican Banner* Office, &c., No. 5, (see Nashville *Daily Union*, Nov. 6, 1863,) pronounce an able opinion upon the confiscation and prize act of 6th August, 1861. The chief question involved was whether the provision of that act covered real estate as well as personal property, and that naturally and logically drew into review the construction of the whole act. Proceeding to answer the proposition of the defendants, that the words "capture and prize" used in that act were meant to be applied solely to personal property, the opinion cites and comments on the language of Sir William Scott in the case of the "Two Friends," where the definition of prize and the jurisdiction of prize courts are given. Judge Trigg then says: "The term *prize*, then, would seem to have an exact, legal, and technical signification, and is appropriate only to captures made from an *enemy* on the *high seas* in time of war. And if our construction of the statute of August 6, 1861, is to be limited by the strictly technical sense of the words "prize and capture," it would follow that such property only as might be captured upon the high seas, and which was intended to be used or employed in aiding or promoting the insurrection, could be the lawful subject of condemnation under said statute. Thus it will be seen that in the construction of the act under consideration, if we are to be controlled by the purely technical meaning of the words 'prize and capture,' the operation of the law will be confined to such captures only as may be made upon the high seas, and all property on land would be exempt therefrom, and be not a lawful subject of prize."

Justice Catron concurred in this opinion without any remarks. It will be seen that this Court, clothed as it is with maritime and admiralty jurisdiction, hold that captures, *jure belli*, except by the aid of this act, cannot be made on land, but are confined to the high seas.

Further along, those learned judges hold that land cap-

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tures must be confined to the cases made in that statute, the same having been passed solely for the purpose of affecting the property of citizens of the United States who *use* their property, or *allow* it to be used in resistance to our laws.

This opinion aids the view of the law pressed at bar, viz: that this act defines and limits the meaning of the word "enemy" as used in and understood by the law of nations, and gives the district courts jurisdiction in admiralty in prize cases growing out of this rebellion, in so far as captures are made *on land*, without reference to the *enemy* character of the owner. There must be some acts of rebellion, such as are named, before the jurisdiction can be invoked as to such property. It is the *acts* of the owner which confer the jurisdiction, not his political status or his residence.

He may be and in fact does continue a citizen of the United States, and yet his property is liable to capture and prize. It is one of the means for punishing him for his resistance to the laws. Aware that the property of their own *citizens* could not be "seized and captured" as the property of enemies, Congress passed this law to assist in putting down this rebellion, and conferred upon the admiralty courts the power to treat this description of property, when in this category, as if it were enemy property. Justice Catron and Judge Trigg say, "the language of the act is broad and comprehensive, and looking to the surrounding facts and circumstances at the time, there being then a formidable rebellion in progress, the intention of Congress in enacting this law must have been to *deter* from so using and employing their property as to aid and promote the insurrection, and then to diminish and weaken the power of the rebellion, and perhaps it was also intended, by taking from him his propr-ty, so unlawfully employed, to inflict upon the party a penalty for his misconduct in thus aiding and promoting a resistance to the laws."

THE GOVERMMENT IS A CUSTODIAN, HOLDING THIS COTTON IN TRUST FOR THE LAWFUL AND LOYAL OWNERS.

I have already had occasion to remark upon the fact proved in the record, that Admiral Porter and some of his officers stated to witnesses that they were taking possession of the cotton found on Red river and its tributaries, for the purpose of saving it from destruction, for the benefit of lawful owners when there were such, and for the Government when there were not such owners. In his letter to the Secretary

of the Navy, dated May 11, 1864, appended to my colleague's brief, he says: "In all cases where persons came to me with claims, I either delivered the cotton to them or gave them receipts for it, instructing them how to get it in Cairo, without being put to the expense of even transportation." To the same import is his letter to the same Secretary, dated May 31, 1864. And Secretary Seward, in his letter to the French Legation, reiterates the same fact. See Appendix to Mr. Springer's brief.

Now, any attempt on his part to cause it, or any of it, belonging to lawful owners, to be condemned as prize of war, is expressly violative of the legal rights of such owners. In the first place, it was not taken, and was not claimed as prize of war when seized. In the second place, he admitted, and specially agreed, that he would hold it *in trust* for such owners. In this view, there is no power in the court to condemn it, but it must take the course of the title of the "lawful owner," and so the court, I presume, will order and decree. There could not be a clearer case of trust made out.

THERE CAN BE, IN THIS COUNTRY, NO MARITIME OR ADMIRALTY JURISDICTION, JURE BELLI, ON WATERS NAVIGABLE EXCLUSIVELY IN ONE STATE.

In addition to limiting the jurisdiction of the district courts in admiralty, as far as our lakes and inland waters are concerned, in view of the act of Congress of the 26th February, 1845, (5th Stat. at Large, 726,) to matters of *contract* and *tort*, thus construing and limiting the decision in the case of the Genesee Chief, 12 Howard, 452, this court, in two cases, Allen *vs.* Newbury, and Maguire *vs.* Card, 244 and 248, 21 Howard, hold that that jurisdiction does not extend to a case where there was a shipment of goods from a port in a State to another port in the same State.

It is submitted that this is general, and intended to apply to all cases of admiralty and maritime jurisdiction. If so, it excludes the exercise of that power in cases like the one under consideration. Here, Red river, upon or near to which the cotton was captured, is navigable *wholly* within the State of Louisiana, and not in any other State or country.

The "Raft," fully thirty-five miles long, which commences a short distance above Shreveport, is the head of navigation, although there are occasional seasons of very high water, when steamboats of light draught go above the

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"Raft;" but this is done by passing through artificial channels into small lakes and basins of water—collections of water drained from the country above the "Raft." This, it may therefore be said, confines the free navigation of Red river to the State of Louisiana.

It is strictly a river inter-State, wholly within the jurisdiction of one State. Now, the jurisdiction here invoked is the general admiralty jurisdiction of this court, as known to the law of nations, and if applied, it must be upon the theory that Louisiana is a *foreign* State, not one of the sisters of our Union of States, but outside of that Union, foreign to its laws and Constitution. The theory is, and the practice is and has been, to treat the States in fact as still in the Union, *liable* to our national laws and our constitutional control. If this is correct, then it is submitted there can be no such seizure of the property of its citizens within its territorial limits, whether on land or on one of its rivers *wholly* within its State lines, as will confer admiralty or maritime jurisdiction upon the district courts, in the absence of an express statute.

NEW AUTHORITIES.

The case cited by the Assistant Attorney General, from 2d Brown's Parliamentary Cases, 423, was decided in 1783, in which the common law court was denied the power to revise a proceeding in admiralty. This was previous, in point of time, to the decision of the Ooster Eems, (1784,) which, as we have seen, is adverse to the doctrine remarked upon, but not decided, because not necessarily involved in this case in reference to *land* captures. This is the only English case, of all those cited by that learned counsel in his oral argument, which seems to bear upon that question.

The decision of Judge Sprague, of the United States district court of Massachusetts, cited by counsel for the purpose of sustaining this point, does not, it seems to me, reach so far, but, in fact, expressly ignores the question of land captures *as such*. A moment's examination of the facts and the opinion will illustrate this.

1st. The capture was made on the Chowan river in North Carolina, which was then *blockaded* by our naval forces. The property was the property of a rebel, and was ferried across the river and landed on a wharf, and while there was captured. It was not an adversary proceeding, there being no claimant of the property. It was libeled as prize of war.

The District Attorney cites the act of 1861 as specially

recognizing the jurisdiction of the United States district courts over all classes of prizes.

2d. The Judge says that the only question was whether that court had jurisdiction over the property as prize in admiralty. * * * * * * * * *

Here the merchandise being enemy's property, was ferried across a river *occupied* by our naval forces for all purposes of war, acting under strict naval authority, and it was soon after seized on the wharf by a naval force. * *

I am satisfied that the admiralty jurisdiction of this court is sufficient to embrace the case.

I remark, 1st, that the learned judge is careful not to express himself upon the subject of land captures in view of the international law, *as there was none in that case*, but, 2d, recognizing the fact that the property was water-borne, and taken *flagrante belli*, while attempting to *run the blockade*, he found enough in the circumstances to hold it prize of war. Viewed in the light of the circumstance of the case, this decision cannot truthfully be said to go to the extent claimed for it by learned counsel. There is no expression in the opinion favoring this doctrine; and unless it is to be drawn from the claim of the district attorney, who cited and relied upon the act of 1861, as conferring this jurisdiction, the decision must be taken as applicable to the blockaded condition of the river, but if it is referrable to that statute, then it was because the owner, being a rebel citizen, came within one of the class of cases provided for in that act.

As to Justice Miller's opinion, 25th Law Reporter, cited by learned counsel, I have to remark, 1st, that the case did not involve the question of land captures, and was not decided on that ground. 2d. In passing, that learned judge expresses an opinion in reference to captures that may be made by our sea-going ships on the Mississippi river, and thinks that a case *might* arise which would justify the application of the law of prize of war, but the case then under consideration was not such an one, and decides it on a different ground.

I have had occasion to notice the other authorities in another place in my brief, and in the argument which I had the honor to address to the court, and have nothing more to add to either.

The Ooster Eems is fully reported in Prize Cases in War Am. Rebele, Fr. Sp., Dutch, Vol. V., p. 485, decided July, 1784, three years after Lindo *vs.* Rodney. It expressly disaffirms the doctrine of land captures.

R. M. CORWINE,
Of Counsel for Claimant.

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ORDER OF THE PRESIDENT AS COMMANDER-IN-CHIEF OF THE ARMY AND NAVY TO MAJOR GENERAL BANKS, ASSIGNING HIM TO THE COMMAND OF THE DEPARTMENT OF THE GULF.

[Copy.]

HEADQUARTERS OF THE ARMY,
WASHINGTON, D. C., Nov. 9, 1862.

Major General N. P. BANKS,
Commanding.

GENERAL: The President of the United States, having assigned you to the command of the Department of the Gulf, you will immediately proceed with the troops assembling in transports at Fort Monroe, to New Orleans, and relieve General Butler. An additional force of some ten thousand men will be sent to you from Boston and New York as soon as possible.

The first military operation which will engage your attention on your arrival at New Orleans will be the opening of the Mississippi and the reduction of Fort Morgan and Mobile city, in order to control that bay and harbor. In these expeditions you will have the co-operation of the Rear Admiral commanding the naval forces in the Gulf and the Mississippi river. A military and naval expedition is organizing at Memphis and Cairo to move down the Mississippi and co-operate with you against Vicksburg and any other point the enemy may occupy on that river. As the ranking General in the Southwest, you are authorized to assume control of any military forces from the upper Mississippi that may come within your command. The line of division between your department and that of Maj. Gen. Grant, is therefore left undecided for the present, and you will receive superior authority as far north as you may ascend the river.

The President regards the opening of the Mississippi as the first and most important of all our military and naval operations, and it is hoped that you will not lose a moment in accomplishing it.

This river being opened, the question arises how the troops and the naval forces there can be employed to the best advantage. Two objects are suggested as worthy of your attention. First: On the capture of Vicksburg, to send a military force directly east to destroy the railroad at Jackson and Marion, and thus cut off all connection by rail between Northern Mississippi and Mobile and Atlanta. The latter place is now the chief military depot of the rebel armies in the West. Second: To ascend with a naval and military force the Red River, as far as it is navigable, and thus open an outlet for the sugar and cotton of Northern Louisiana. Possibly both of these objects may be accomplished if the circumstances should be favorable.

It is also suggested, that having Red River in our possession, it would form the best base for our operations in Texas.

It is believed that the operations of General Rosecrans in East Tennessee, of General Grant in Northern Mississippi, and of General Steele in Arkansas, will give full employment to the enemy's troops in the West, and thus prevent them from concentrating in force against you; should they do so, you will be reinforced by detachments from one or more of these commands.

These instructions are not intended to tie your hands or to hamper your operations in the slightest degree. So far away from Headquarters you must necessarily exercise your own judgment and discretion in regard to your movements against the enemy, keeping in view that the opening of the Mississippi river is now the great and primary object of your expedition; and I need not assure you, General, that the Government has unlimited confidence not only in your judgment and discretion, but also in your energy and military promptness.

Very respectfully, your obedient servant,

(Signed) H. W. HALLECK,
General-in-Chief.

Official copy.

(Signed) J. C. KELTON,
Assistant Adjutant General.

HEADQUARTERS OF THE ARMY,
January 20, 1865.